

**ATTACHMENT #21**  
(#4 on Memo)

- **Copies of additional correspondence**

MCPB  
Item # 1 & 2  
07/07/05**MEMORANDUM:**

**TO:** Montgomery County Planning Board

**FROM:** Rose Krasnow, Chief, Development Review Division *R&K*

**SUBJECT:** **RECONSIDERATION of Alleged Height Violations**  
**CONSIDERATION of Alleged Setback Violations**

**PROJECT NAME:** Clarksburg Town Center

**REVIEW BASIS:** Div. 59-D-3.6 of the Montgomery County Zoning Ordinance

**Case #:** 8-98001 & amendments and 8-02014 & amendments

**ZONE:** RMX-2

**LOCATION:** In the northeastern quadrant of the intersection of Stringtown Road and Frederick Ave (MD RT. 355), Clarksburg

**MASTER PLAN:** Clarksburg and Vicinity Master Plan

**HEARING DATE:** July 7, 2005

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**STAFF RECOMMENDATION:**

*Finding of site plan violation for all buildings that exceed the site plan signature set height restrictions of 35 feet for single-family units and 45 feet for multi-family buildings.*

*Finding that front setbacks do not comply with site plan approvals.*

**PROCEDURAL PREFACE:**

These two items have been noticed as public hearings during which the Board will consider whether there have been site plan violations with respect to certain building heights and

certain building setbacks. Although other issues may be raised with respect to the overall development of Clarksburg Town Center, the Board's decision will be based solely on the issue of the merits of these two alleged violations. If the Board does not find any violations, then its consideration of this matter is concluded. If the Board does find violations, then it will proceed immediately to consider any citations and/or corrective action that it may elect to impose. Based on staff's recommendations with respect to the merits of the alleged violations, staff has prepared a separate staff report recommending Board action in the event it supports staff's recommendations on the height and setback issues.

#### **I. Background Regarding the Complaint**

In the summer of 2004, a group known as the Clarksburg Town Center Advisory Committee (CTCAC) was formed by residents of the Town Center who were concerned that Newland Communities, the developer of the Clarksburg Town Center project, might not be adhering to the vision and intent of the Clarksburg Master Plan or to the Project Plan guidelines. The residents first notified the Commission of their concerns in a letter to Derick Berlage, dated August 16, 2004 (Attachment 1). The issue raised in the original letter was that Newland had proposed significant changes to the retail phase (Phase III) of the development. Soon afterward, the issue of height was also raised. Specifically, CTCAC voiced concern that a multi-family condominium building constructed by Bozzuto (Building 3) appeared to violate the 4-story (45 feet) height limit for residential structures specified in the Project Plan. Over the course of the next several months, staff corresponded with the CTCAC group and met with them in person to discuss their concerns, but the group was not satisfied with the responses received. Most of these discussions centered on the height requirement, because the amendment for the Phase III retail portion of Clarksburg Town Center that first prompted their concerns had not yet been submitted to Park & Planning for review.

On January 25, 2005, CTCAC officially requested a violation hearing with respect to height. (See Attachment 2, noting that the date on the letter mistakenly says January 25, 2004, instead of 2005.) The hearing was held on April 14<sup>th</sup> and lasted approximately three hours. At the conclusion the Board voted 4 -1 (with Commissioner Wellington dissenting) to approve a motion that no violation had occurred with respect to height. However, in a letter dated April 22, 2005, CTCAC formally requested a reconsideration of that decision, pursuant to Section 11 of *the Rules of Procedure for the Montgomery County Planning Board*. As grounds for reconsideration, CTCAC contended that the May 13, 1999 Site Plan Enforcement Agreement, which had been signed by both the Developer and the Developer's attorney, clearly demonstrated that the entirety of Clarksburg Town Center Phase I (#8-98001) was subject to the Signature Set and any amendments thereto, and that the Signature Set in question established height restrictions of 35' for single family residences and 45' for multi-family units. Moreover, CTCAC maintained that a member of staff had altered the data table included in that Signature Set to indicate that the height limits specified in feet had been changed to show stories only and that this staff member had misled the Board at the hearing regarding that alteration.

Subsequent to receiving the request for reconsideration, it was learned that said staff member had indeed altered the data table and that this alteration was made, not soon after approval of the Site Plan to bring it into seeming conformance with the staff report and opinion,

as had been stated by said staff member at the first hearing, but in the fall of 2004, after the issue of potential height violations had been raised by CTCAC. For these reasons, the Planning Commission voted unanimously on May 5, 2005 to reconsider the height violation issue.

The issue of setback violations arose in the winter of 2005 when DPS stopped construction on a 2 over 2 building which did not meet the side setback requirement. Further investigation found many complicating issues with respect to the setback requirements, and, consequently, this matter was not brought to the Board simultaneously with the height issue in April. The setback issue is fully analyzed in this report.

## **II. Summary of Staff Findings on Height and Setback Issues**

It has been clearly established that many of the buildings in Clarksburg Town Center exceed the height limitations of 35 feet for single-family attached and detached homes and 45 feet for multi-family units that are clearly set forth in the Signature Set<sup>1</sup> and incorporated by reference into the Site Plan Enforcement Agreement (SPEA).<sup>2</sup> These limitations appear even though both of these documents were prepared after the Planning Board had approved the Site Plan, which did not impose a height limitation in the Opinion at all, but did incorporate by reference the staff report, which contains a height limit of four stories, with no limitation in terms of feet.<sup>3</sup>

What is unclear is why the height limitations set forth in the Site Plan Enforcement Agreement are more restrictive than the standard set in Site Plan Opinion. One could argue that the data table that appeared as part of the original project plan submission that came into MNCPPC in 1994 was inadvertently carried forward from project plan through site plan. Regardless, Staff views the Site Plan Enforcement Agreement as a legally binding document, and the standards contained therein must be controlling unless and until amended. Consequently, staff's recommendations are as follows:

With respect to the multifamily buildings, staff recommends that the Board find that structures built taller than the 45-foot restriction contained in the Signature Set and incorporated by reference into the Site Plan Enforcement Agreement constitute a site plan violation. Bozzuto has built or plans to build all of the multi-family buildings. Should the Board

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<sup>1</sup> The "Signature Set" is the set of engineered drawings that show the multiple details of a project including, but not limited to, the landscaping and streetscaping plans, the amenity and recreational elements required in the plan, and the MPDU locations and unit types. It also includes a "project data table," which reflects dimensions such as height limitations, setbacks, etc.

<sup>2</sup> The Site Plan Enforcement Agreement is a contract signed by an applicant and the Planning Board (by its designee, the Chief of Development Review Division) that obligates the applicant, its successors and assigns to build the project in accordance with, among other things, the Signature Set documents.

<sup>3</sup> A review of the original Project Plan documents finds a similar situation. The Project Plan staff report and opinion speak only of a height limitation of 4-stories and 45 feet, with no mention of a 35-foot restriction (i.e. three stories, 35 feet). Yet, the approved Project Plan drawings once again show a data table that delineates both the 35 and 45 foot limits.

find a violation with respect to these buildings, staff recommends that each unit constitute a separate site plan violation.

With respect to 2 over 2's, which are actually single-family attached units, staff recommends that the Board find that structures built taller than the 35-foot restriction set forth in the Signature Set and incorporated by reference into the Site Plan Enforcement Agreement constitute a site plan violation. Craftstar has built or plans to build all of the 2 over 2s. Should the Board find a violation with respect to these structures, staff recommends that each unit constitute a separate site plan violation.

With respect to townhouses, staff recommends that the Board find that structures built taller than the 35-foot restriction set forth in the Signature Set and incorporated by reference into the Site Plan Enforcement Agreement constitute a site plan violation. The builders in question include Craftstar, NV Homes, Miller & Smith and Porten. Should the Board find a violation with respect to these structures, staff recommends that each unit constitute a separate site plan violation.

With respect to the setback issues, Staff recommends that the Board find that structures built with a front setback of less than 10 feet as required by the standards set forth in the Signature Set and incorporated by reference into the Site Plan Enforcement Agreement constitute a site plan violation. Again, the builders in question include Craftstar, NV Homes, Miller & Smith and Porten. Should the Board find a violation with respect to these structures, staff recommends that each unit constitute a separate site plan violation.

### **III. Background Regarding the Clarksburg Town Center Project**

The Clarksburg Master Plan and Hyattstown Special Study Area ("Master Plan") was approved by the County Council in June of 1994. It called for the creation of a Town Center in Clarksburg, which would include the Historic District as a focal point and would be surrounded by a mix of uses, including office, residential, and retail.

In December of 1994, both a Project Plan (#9-94004) and a Preliminary Plan (#1-95042) were submitted for review by Piedmont and Clarksburg Associates, represented by Steve Klebenoff and Mark Montgomery. Using the optional method of development under RMX2 zoning, the plan envisioned what is now known as a neo-traditional community and called for the construction of a maximum of 1300 residential units, 100,000 square feet of office, and 150,000 square feet of retail, to be constructed in phases. The Project Plan was approved in June of 1995. The Preliminary Plan was approved in March of 1996.<sup>4</sup>

The first site plan for Phase One (#8-98001) was not approved until March 3, 1998. Although Piedmont and Clarksburg Associates submitted the Phase One Site Plan and sold the

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<sup>4</sup> The Preliminary Plan had a validity period of nine years, which expired on March 26, 2005. However, prior to the expiration date, the applicants submitted a request for an extension. The issues regarding the extension request will be the subject of a public hearing on July 21, 2005.

first lots to builders for the construction of single-family dwellings, the remainder of Phase One was taken over by a new developer, Terrabrooke, in February of 2000. Terrabrooke submitted the site plan for Phase II, which was approved on June 17, 2002. In October of 2003, Newland Communities became the Master developer for Clarksburg Town Center. At this time, approximately 725 units have been built or are under construction in Phase I and II of the project.<sup>5</sup>

#### **IV. Assessment of Height Standards**

##### **A. Master Plan**

It is important to begin by addressing the issue of height in the Town Center as it relates to the Master Plan. The complainants have stated on several occasions that the height in feet was specified in the Project Plan to ensure that the development would be in compliance with the intent of the Master Plan. It is the opinion of staff, however, that the Master Plan does not offer such specific guidance with respect to height. Clearly, the Master Plan anticipated the Town Center development. It states (p. 26) "The Plan proposes a transit-oriented, multi-use Town Center which is compatible with the scale and character of the Clarksburg Historic District." It goes on to say that this plan "proposes a buffer concept around the historic district to protect its character." However, on Page 46, it simply states "All apartment buildings in the future Town Center will be four stories or less except within walking distance of the transit stop, where a building height of six to eight stories may be allowed if Master Plan Recommendations concerning compatibility with the historic district can be achieved." In other words, not only is height *not* specified in feet in the Master Plan but also there is an implication that although four stories is the standard, taller buildings of six to eight stories could be deemed acceptable under certain circumstances.

The complainants have also stated that the reason the Master Plan was specific with respect to height was to protect the character of the Historic District. There are several references in the Master Plan to the relationship between the Town Center Development and the Historic District. For example:

"The relationship between the Clarksburg Historic District and the new Town Center is a sensitive one. The historic district must retain its integrity and identity while still blending smoothly with the new neighborhoods that will be created.

The idea of isolating the historic district from the new Town Center is unrealistic and defeats the purpose of having "new" Clarksburg grow naturally out of "old" Clarksburg. It is equally important, however, that the historic district not be subsumed by the new Town Center and that the character and identity of the district be preserved, while allowing for appropriate growth and change." (P. 48)

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<sup>5</sup> Under the current approvals an additional 464 units can be built, including 170 in Phase III, which has not yet been approved. This would be a total of 1189 units, which are considerably fewer than the 1300 units approved.

The Master Plan then specifies buffer areas near the Historic District that will "help to assure a sympathetic relationship between "old" and "new." One of the buffer zones (an area of approximately 550 feet) is identified as an area appropriate for single-family detached housing with a maximum height of two stories, while a second buffer (also an area of approximately 550 feet) is shown as appropriate for housing with a maximum height of three stories. Outside of these two areas, one must assume that the four story height limit applies.

Staff, therefore, has made a finding that a height specification of "four stories" with no limitation in feet conforms with the Master Plan recommendations. However, it is important to note that height was a much discussed issue during the two years of debate leading up to the adoption of the Master Plan. Indeed, on 3/23/92 the Clarksburg Civic Association reached the consensus position that:

"The Town Center District should not be planned around a predetermined population. Height limits necessary to establish a small town character should be the dominant consideration. No residential development east or west of I-270 should exceed three stories in height."

On 8/10/93, CCA reaches another consensus position, stating that:

"The Town Center and Transit Corridor Districts should not be planned around a predetermined population. Height limits necessary to establish a small town character should be the dominant consideration. Six to eight story apartment buildings are inappropriate. Residential development should not exceed three to four stories."

One could, therefore, make the assumption that even though the Master Plan did not specify any height limitations in terms of feet, the applicant may have felt it wise to put such limits on their development to ease the concerns of existing Clarksburg residents.

## **B. Project Plan Approval**

When the Project Plan (#9-94004) was submitted in 1995, it was unique in terms of its size and complexity, particularly since it proposed one of the first neo-traditional communities that staff had analyzed. Many important issues had to be resolved. Indeed, the project plan opinion lists these issues as follows: the development ceiling; transportation improvements, road dedications and construction, environmental improvements, the Park/School, historic preservation, compatibility with the Historic District, street layout, staging of amenities, landscaping, maintenance, and roadway access. Height is not identified as an issue or even discussed. Moreover, there is no height limitation in the RMX2 zone. However, the data table included in the Planning Board's opinion showed the following:

Building Height	Required	Proposed
a. Commercial	4 stories	4 stories (50 ft)
b. Residential	4 stories	4 stories (45 feet)

Much has been made of the fact that the data table shows the "Required" height to be four stories, whereas the height in feet is only "Proposed." In staff's opinion, the argument that the height in feet was meant only as a suggestion is not consistent with this agency's interpretation or application of these data tables nor is it plausible. Data tables routinely show what is required in a zone; the developer then sets forth what will be provided in order to show that the standard will be met. In this instance the application could have stated "four stories" and been in compliance, but, as indicated in the above Master Plan discussion, it seems quite likely that a conscious decision was made to specify expressly that the four story requirement would be limited to 45 feet in order to appease Clarksburg residents and help assure acceptance of the plan. Therefore, staff concludes that at the time of Project Plan approval, 45 feet was the maximum height limit for residential structures.

### **C. Preliminary Plan Approval**

The Preliminary Plan (1-95042) received approval on September 28, 1995 and the opinion was released on March 26, 1996. The opinion states that the underlying development authority was Project Plan #9-94004, and that the preliminary plan specifically includes the records from those prior hearings. Again, no mention is made of height, nor does the opinion include any sort of data table. However, it does state on p. 6 that:

"Preliminary Plan 1-95042 is expressly tied to and interdependent upon the continued validity of Project Plan No. 9-94004. Each term, condition and requirement set forth in the Preliminary Plan and Project Plan are determined by the Planning Board to be essential components of the approved plans and are, therefore, not automatically severable. Should any term, condition, or requirement associated with the approved plans be invalidated, then the entirety of the approved plan must be remanded to the Planning Board for further consideration."

### **D. Site Plan Approval**

The first site plan (Phase 1, #8-98001) was not approved for another three years.<sup>6</sup> The issues that had to be addressed at site plan proved even more complex. Forty-two conditions, an exceptionally large number, were made part of the site plan approval. None of the conditions dealt with height, but the staff report does make reference to height on page 12, stating, "The multifamily units are four story apartment styled buildings located at the outside block face with an internal parking lot." The data table listing development standards also shows height, but the parenthetical reference to height in feet was dropped as shown below:

	Permitted/Required	Proposed
Building height	4 stories	4 stories

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<sup>6</sup> Phase I was approved for a total of 75 SFD, 295 TH, and 298 multi-family units inclusive of 96 MPDU's. Although the unit mix and numbers changed during the course of several amendments, it appears that the signature set data table did not change.



If one was reading only the staff report and the related opinion (which incorporated the staff report by reference) for the Phase I Site Plan, it would be easy to conclude that over time the plan had been refined and the height requirement had become less restrictive, particularly since the more general standard of four stories was still in keeping with the Master Plan. Indeed, this was the assumption behind staff's original responses to CTCAC regarding the height issue. The current developer has also argued that one need only look to the site plan staff report and the opinion to determine that the only height requirement was "four stories" for residential. However, further analysis reveals that the Signature Set, submitted by the developer in 1998 and then reviewed and signed by MNCPPC in 1999, included a data table that was more specific than the project plan data table. It established a maximum allowable height of 35 feet for single family detached and attached units, and a maximum height of forty-five feet for multi-family units. Stories are not even shown. This same data table is referenced as part of the Site Plan Enforcement Agreement, which is yet another document that is signed by the developer or his representative and has the force of law behind it. Moreover, it is important to note that there is nothing contradictory about a height specified as four stories in the opinion but delineated as 45 feet on the Signature Set. These documents all appear to be in order, and demonstrate a specific requirement to limit the height of the buildings in feet.

At the first violation hearing, the staff member making the presentation produced another document that showed the Signature Set data table with the height in feet crossed out, and four stories written in by hand. The staff member stated that this change was made soon after the signature set was signed because the discrepancy had been discovered and it was necessary to bring the documents into conformity. Furthermore, the staff member stated that only single family homes detached homes had been built under the erroneous signature set. However, as was later learned, the signature set data table was not altered until late in 2004, long after many of the housing units of all types had been built. There is no evidence that a decision was ever made to change the height limitation of 35 feet and 45 feet to the more generic four stories, either by the Board or administratively by staff.<sup>7</sup> Therefore, the conclusion stands that the site plan requirements relating to height have been violated.

The developers have argued that their building permit applications included construction plans that accurately showed the height of the proposed buildings as being higher than the 35 and 45-foot limitations on single-family and multi-family units, respectively. The developers further state that they relied on the building permits that were issued, after having been reviewed by both DPS and M-NCPPC. They use these approved permits as the basis for their position that everyone knew and agreed that the prevailing standard was simply "three stories" or "four stories."

In fact, what has come to light as a result of this investigation is that no agency has been reviewing the height of proposed buildings in developments where height limitations are not specifically set by the zoning code. MNCPPC staff has always assumed that DPS reviews building height in all projects. In response to staff's inquiries about DPS' release of building permits in this project, DPS has stated that it lacks the statutory authority to undertake any

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<sup>7</sup> The developers have argued that Staff administratively approved the new height pursuant to authority delegated by the Planning Board through Site Plan Condition No. 38. Staff finds no support for this conclusion.

review of building height if a project is developed under an optional method of development.<sup>8</sup> DPS' stated presumption that MNCPPC staff reviews height in these specific projects is not carried through in the process, however, in that DPS sends no information to MNCPPC that indicates height (either numerically on an application form or in the form of building elevations) for MNCPPC staff to review during the building permit review process.

Even in light of this lapse in the building permit review process, staff does not concur with the conclusion that this "agency practice" resulted in a *de facto* change of the 35-foot and 45-foot height limitations in the signature set.<sup>9</sup>

On May 9, 2002, the Board reviewed Site Plan #8-02014 for Phase II of the Clarksburg Town Center. Approval to build 487 dwelling units (153 SFD, 202 TH's and 132 multi-family units) inclusive of 46 MPDU's, was granted on June 2, 1003. With respect to height, the Project Data Table (p.17) states the following:

Building height	Permitted/Required	Proposed
	4 stories	4 stories

Although the signature set for this phase drops the height limitation altogether, it was not signed until October 14, 2004, yet homes were sold to private citizens as early as 4/4/03, which means that construction of these units was begun in error. In trying to determine how this occurred, it was discovered that the Record Plat for Phase II referenced the Signature Set for Phase I. Before staff will sign off on a building permit, a check is made to insure that there is a signed signature set. However, the builders referenced the signature set for Phase I, and this one, of course, was signed. The MNCPPC Plan Reviewer did not realize that this was not the correct reference. He merely knew that the referenced signature set had been signed, so he proceeded to sign off on Phase II building permits. Moreover, this also means that the reviews were still based on the data table from Phase I. Technically speaking, therefore, it would appear that the height limitation in feet was still the prevailing standard, although, as mentioned earlier, MNCPPC was not checking heights.

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<sup>8</sup> MNCPPC has not had an opportunity to review the validity of this claim.

<sup>9</sup> Staff cannot understand why *all* the builders failed to adhere to the site plan height standard. One can only assume that this came about because considerable time passed between the date of Project Plan approval and the submission of the first building permit application, and the project changed hands more than once. It is quite possible that attention was paid only to the site plan staff report and the opinion, not to the signature set or the SPEA. Permits were then submitted and approved, which only seemed to further indicate that there was no specific height limitation in feet. As a result, additional plans for taller structures were submitted, particularly given a growing demand on the part of consumers for homes with higher ceilings.

## **E. Issues Raised by the Community**

Numerous letters, emails and phone calls have been received from residents of the Town Center, prospective purchasers, and from the Clarksburg Civic Association, but the opinions expressed differ widely. While many clearly support CTCAC's position that the builders have intentionally ignored the standards set forth for the Clarksburg Town Center and believe that the quality of their community has been compromised as a result, others express great satisfaction with their homes and their living environment. Some of this group have argued that CTCAC is an ad hoc group composed of a selective group of citizens that does not represent the entire community. However, since the developer still retains control of the project, no official homeowner association representing all of the Town Center residents has yet been established.

## **V. Staff's Findings**

The Board approved the project plan in 1995, not long after the Master Plan was adopted. Given this proximity in time and the express Zoning Ordinance requirement that the Board review the project plan for conformance with the Master Plan, staff readily concludes that the original height limit of four stories, 45 feet approved as part of the Project Plan Opinion was deliberate and designed to implement the Master Plan's goals for this community. The Site Plan Opinion, by incorporating the Staff report, reiterated the 4-story height limitation for all residential buildings. This standard, however, is less restrictive than the data table that was included in the approved project plan drawings and the Site Plan Signature Set, which showed a height limit of 35 feet for single family detached and attached dwellings and 45 feet for multi-story structures. It is this data table that was incorporated by reference into the Site Plan Enforcement Agreement.

It is unclear as to why the Signature Set and the Site Plan Enforcement Agreement are more restrictive than the original project plan approvals, particularly given the fact that these documents are prepared and submitted by the applicant, but it has been clearly established that they are. The Site Plan Enforcement Agreement is a legally binding contract, and the standards contained therein must be considered controlling unless and until amended. The fact that numerous builders engaged in a practice of submitting building permit applications that violated the standards contained in the signature set and incorporated into the Site Plan Enforcement Agreement reflects a patent disregard for post-approval implementation documents that concerns staff greatly. Staff concludes that each structure that was built in excess of the height limitations contained in the signature set constitutes a site plan violation, and recommends that the Board find each unit in said buildings to be a violation of the site plan. Specifically, Staff finds that 433 townhouses, 26 two over twos, and 30 multi-family units are in violation of the height limits.

## **VI. The Setback Issue**

While staff at Park and Planning were working with CTCAC in an attempt to resolve the height issue, DPS issued a stop work order on a 2 over 2 building in Clarksburg Town Center because a wall check had revealed that the structure did not meet the setback standard. Further review indicated that a large number of structures, many of which were already occupied, failed to meet the setback standard of 10 feet from any street.

A review of the relevant documents reveals the following:

The Master Plan does not set a side setback standard for Clarksburg Town Center. Rather, it states (p. 98) that a development like Clarksburg Town Center can best be "implemented through zones which allow the developer more flexibility in terms of layout and provide for more rigorous design review by the Planning Board and/or County Council." The RMX2 zone was designed to allow this flexibility and states that with respect to the setback from any street, "no minimum setback is required if in accordance with a master plan" (59-C-10.38).

The Project Plan Opinion, issued in June of 1995, includes a data table (p. 9) that says the following with respect to setbacks:

From any Street*	Required	Proposed
Commercial Bldgs	NA	0 ft. min
Residential Bldgs	NA	10 ft. min.

\* No minimum setback is required if in accordance with an approved master plan.

The Site Plan shows a similar data table, but note the change in the wording of the footnote:

Min. Bldg setbacks (ft)		
From any street	Required	Proposed
Commercial bldgs	n/a	n/a - w/Phase II
Residential bldgs	n/a**	10 ft. min**

\*\* The Planning Board reviewed this setback during the Project Plan Review and found that no setback is necessary per the approved master plan.

This wording seems to imply that the Board found, at the time of Site Plan, that no setback from the street was required, but since the 10 foot standard still appears, one has to assume that the wording of the footnote was meant to imply that the Board, in its review, recognized that no setback was required if in accordance with a master plan, but that the Board chose to establish one.

The data table on all of the documents (project plan drawings, site plan signature set, etc.) clearly shows that the setback from any street is 10 feet and that the front yard setback is 10 feet. Moreover, when a unit occupies a corner lot, DPS considers that unit to have two fronts<sup>10</sup> so two ten foot setbacks would be required. Builders in the County are well aware of this fact. One could make the case that this ten foot setback is not appropriate in a neo-traditional community, particularly with respect to private streets that primarily serve as an access point to driveways. Had an amendment been sought, such an amendment may have been granted. However, no such change was requested. Therefore, staff has made a finding that 102 violations have occurred with respect to the front setback standard.

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<sup>10</sup> As per DPS Code Interpretation/Policy ZP0403-3: "Each corner lot has two front yards and therefore requires a front yard setback from each street."

## **CONCLUSION**

As stated above, Staff finds that the developer and the builders did not follow the standards with respect to both height and setbacks that were set forth in the Site Plan Signature Set and incorporated by reference into the Site Plan Enforcement Agreement. Staff concludes that based on this review of the underlying approvals, and the subsequent implementing documents, that the Board should find the site plan violations described above. If the Board does find violations with respect to height and/or setbacks, staff will have another report prepared dealing with the issue of a Plan of Compliance.

### **Attachments\***

- \* The entire package of attachments will be distributed Friday, July 1, 2005.

August 16, 2004

The Honorable Derick Berlage  
Chairman  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

RECEIVED  
1288  
AUG 18 2004

Re: Proposed Changes to Project Plan for Clarksburg Town Center

OFFICE OF THE CHAIRMAN  
THE MONTGOMERY COUNTY PLANNING BOARD  
PARK AND PLANNING COMMISSION

Dear Mr. Berlage:

As Co-Chairs of the Clarksburg Town Center (CTC) Advisory Committee, we are writing as the collective voice of the community to express our strong opposition to the deviations (as contained within the Site Plan proposed by the developer, Newland Communities) from the approved Project Plan #9-94004. These deviations concern the commercial and other sections of the development as reflected in the Site Plan presented by Newland Communities during the July 27, 2004 meeting with CTC residents.

As proposed by the original applicants and developer, Clarksburg Town Center Venture and Terrabrook, and approved by the Planning Board, Clarksburg Town Center is a neo-traditional community reflecting the "New Urbanism" school of community planning and design. Accordingly, it is designed and intended to provide a unique pedestrian-oriented neighborhood that allows residents to walk to the recreational, retail, civic and other facilities dictated in the Master and Project Plans previously approved by the Board. Specifically, the Town Square was designed and intended to serve as the focus of public life, with retail and commercial establishments located on the East side of the development's Main Street and Town Square. The Master Plan also gave careful consideration to protecting the character of Clarksburg's Historical District, the Gateway to the Town Square.

Clarksburg Town Center is in the RMX-2 Zone, which allows for both "standard" and "optional" methods of development. Under the "standard" method, office and retail uses are not allowed at all. Accordingly, the developer submitted and the Board approved an "optional" method of development that allowed for high-density residential units mixed with commercial uses if in accordance with the guidelines of the Master Plan, and that explicitly required certain public amenities and facilities. It appears that the developer thus could not have gotten approval for this high-density residential project without including in its application the community-oriented and pedestrian-friendly plans for the Town Center's retail and commercial development that the Commission ultimately approved.

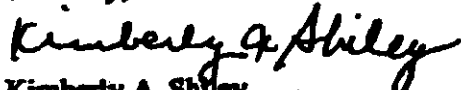
Newland Communities (who purchased the development from Terrabrook late last year) is now proposing a radical change to the retail and commercial areas of the Town Center. Under this proposal, the retail and commercial establishments to be located along Main Street and the Town Square will be replaced with four-story condominium buildings and other multi-family residential units, thus increasing the residential density of what is already a high-density development. The retail and office square footage has been reduced by 53.2% of the approved square footage and the proposed plan consists of a huge square parking lot bordered by a 58,800-square foot grocery superstore (reportedly Giant) with retail establishments adjoining on each side, a proposed drive-thru bank, one freestanding restaurant and a combination office/retail building located along the south side of the parking lot.

Although its configuration is in the shape of a square, Newland Communities' proposed change is the very antithesis of the "Town Square" concept that is a defining characteristic of neo-traditional communities, and that was at the heart of the Clarksburg Town Center plan that the Board approved. It simply replaces the pedestrian-friendly, community-oriented Town Center concept with a regional strip mall, but with one important difference—Newland Communities' proposed regional strip mall will be located in the heart of a high-density residential community. Indeed, one of the two principal thoroughfares for automobile ingress to and egress from the shopping center will be through and/or adjacent to the Town Square, departing even further from the pedestrian-friendly approach that both the Master and Project Plans define as the main characteristic of Clarksburg Town Center.

As you can well imagine, Newland Communities' proposal is inconsistent with the Planning Board's Master Plan and subsequent Project Plan and is not reflective of the community marketed by the builders of CTC nor is it in keeping with the concept that was solicited at the Visitor's Center when my neighbors and I were making our decisions to purchase homes in Clarksburg Town Center. Many others in the vicinity of CTC are opposed to Newland Communities' proposed changes as well. At the July 27, 2004 meeting with Newland Communities to discuss their proposal, the room was filled to capacity with concerned Clarksburg residents from the Town Center and from the general community, while additional concerned residents stood in the hall. The following week, a meeting held by residents of CTC regarding the same issue attracted over 100 residents and the CTC Advisory Committee was established to address these issues. The Clarksburg Civic Association, which has been instrumental in the planning and implementation process for Clarksburg Town Center for over a decade is also opposed to Newland Communities' deviation from the Project and Master Plans.

Based on these issues, we respectfully request that the Board not approve Newland Communities' proposed site plan, and require Newland Communities to abide by the original terms of the Project Plan. We would ask that the Board not take any action on the proposed site plan, requests for amendments, or requests for zoning variances pertaining to a reduction in the RDT Zones until it has studied the proposal thoroughly and received the input of the residents of the Clarksburg Town Center, the Clarksburg Civic Association and all other interested parties. Thank you for your consideration.

Sincerely,

  
Kimberly A. Shiley  
Co-chair, CTC Advisory Committee

  
Carol L. Smith  
Co-chair, CTC Advisory Committee

cc: Sue Edwards, Team Leader I270 Corridor Area, M-NCPPC  
John Carter, Chief, Community Based Planning Division, M-NCPPC  
Wynn Withans, Development Review, Planning Department, M-NCPPC  
Clarksburg Civic Association  
Clarksburg Historical Society  
Montgomery County Historical Society  
Doug Duncan, County Executive, Montgomery County  
Kathy Matthews, Director of Upcounty Regional Services  
Nancy Hislop, Assistant Director of Upcounty Regional Services  
Mike Knapp, County Council, Montgomery County  
Brian Long, Aide to Council Member Mike Knapp  
Kimberly Ambrose, Vice President of Operations, Newland Communities  
Taylor Chess, Vice President Investments, Regency Centers  
Susan Singer-Bart, The Gazette

**CLARKSBURG TOWN CENTER ADVISORY COMMITTEE**  
**Clarksburg, MD 20871**

**5**  
**January 25, 2004**

**The Honorable Derick Berlage**  
**Chairman**  
**Montgomery County Planning Board**  
**8787 Georgia Avenue**  
**Silver Spring, Maryland 20910**

**Subject:        Building Heights in Clarksburg Town Center**  
**Phase I Site Plan #8-98001 and Phase II Site Plan #8-02014**

**Dear Mr. Berlage:**

**We are writing to you in response to the letter we received from Rose Krasnow relative to height violations within Clarksburg Town Center development. The Clarksburg Town Center Advisory Committee (CTCAC) has reviewed the letter and is astounded by the determination of the Staff on this issue.**

**The CTCAC, and the entire Clarksburg community, had placed its faith in M-NCPPC, expecting M-NCPPC to faithfully serve as guardians of the Master Plan intent and to ensure adherence to the Board-approved Project Plan. Unfortunately, we find not only that the M-NCPPC Staff has been grossly negligent in the Site Plan review process, but, based on the subsequent Staff determination regarding the height violations, has fallen abysmally short of serving the citizens of Clarksburg. Therefore, we respectfully request a full Board hearing on this issue.**

**For your record, we have attached a copy of Rose's letter with our specific response to each point. We have also attached our document reference table highlighting supporting detail for our case and position on the matter.**

**We would like the Board to consider this letter as an issuance of a formal complaint regarding height violations within Clarksburg Town Center development. Based on the provisions of Zoning Ordinance 59-D-3.6, we would also ask the Board to exercise its right to issue a stop work order pursuant to Site Plans previously approved for buildings not yet built, but also having the potential to exceed the height guidelines as defined in the Board-approved Project Plan Findings. Without such action on the Board's part, we fear that development of other buildings will proceed and the community will have no recourse.**

**Please respond to us with the earliest possible date and time for scheduling of a full Board hearing on this issue. In view of the pending development of other buildings in question, we believe action must be taken immediately. Scheduling of a hearing date prior to February 10<sup>th</sup> will be greatly appreciated.**


**Sincerely,**


**Amy Presley, Kim Shiley, Carol Smith, CTCAC Co-Chairs,**  
**on behalf of the CTCAC**



MCPB  
Item # 3  
07/07/05**MEMORANDUM:**

**TO:** Montgomery County Planning Board

**VIA:** Charles R. Lohr, Director, Department of Park and Planning 

**FROM:** Rose Krasnow, Chief, Development Review Division 

**SUBJECT:** PLAN OF COMPLIANCE for Height and Setback Violations

**REVIEW BASIS:** 50-41 of the Montgomery County Subdivision Regulations (Enforcement) and 59-D-3 6.6 of the Montgomery County Zoning Ordinance (Failure to Comply)

**PROJECT NAME:** Clarksburg Town Center

**CASE #:** 8-98001 & amendments and 8-02014 & amendments

**ZONE:** RMX-2

**LOCATION:** In the northeastern quadrant of the intersection of Stringtown Road and Frederick Ave (MD RT. 355), Clarksburg

**MASTER PLAN:** Clarksburg and Vicinity Master Plan

**HEARING DATE:** July 7, 2005

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### **STAFF RECOMMENDATION:**

- (1) That the Board direct staff to issue citations pursuant to Section 50-41 of the Montgomery County Subdivision Regulations for each height and setback violation found; and**
- (2) That the Board approve a Plan of Compliance pursuant to Section 59-D-3.6 of the Montgomery County Zoning Ordinance that (a) escrows all fines assessed under Section 50-41 until the time of Planning Board review of Phase III of the Clarksburg Town Center Project for use in whole or in part for corrective mitigation of the violations; (b) authorizes staff to approve a new Project Plan and Site Plan signature sets that conform with the Board's original Project Plan approval of 45 feet/4 stories for all townhomes; (c) approves the height of all built and unbuilt 2-over-2s and Building 6; and (d) requires Building No. 3 to be redesigned to no more than 45 feet in height.**

### **BACKGROUND:**

Staff had four overriding goals in its recommendations on the Clarksburg Town Center matter:

1. To sanction the builders, through fines, for failing to comply with the Site Plan Enforcement Agreement and Signature Set – notwithstanding the fact that they were more stringent than the Board's underlying approvals. This is designed to act as a deterrent to similar disregard for implementing documents in the future.
2. To give to existing and prospective innocent third-party purchasers immediate assurance that their homes do not suffer from any cloud of title. This can be done through a "Plan of Compliance," authorized under Section 59-D-3.6 (failure to comply with a site plan) as detailed below.
3. To recommend that a portion of the fines be escrowed with MNCPPC for the provision of additional amenities within the Clarksburg Town Center. During the course of this investigation, numerous issues were raised with respect to the amenities that were to be provided within the Clarksburg Town Center. Staff recommends that a suggested amenity package be brought back to the Board during consideration of the Site Plan for Phase III of Clarksburg Town Center in October, 2005. This process will allow the Board, after input from all stakeholders, to make a considered and reasoned decision as to what additional amenities would be appropriate in the context of the final buildout phase of the Clarksburg Town Center.

4. To advise the Board that in the opinion of staff, it is difficult to find that extensive damage to the community has resulted from the "as built" environment in Clarksburg. This is because, although there are many violations of the development standards contained in the Signature Set, the heights as built actually largely conform to the height limitations established by the Project Plan. The setbacks pose a somewhat different situation, because the Board clearly had the authority to take the setback down to zero but instead imposed a 10-foot setback. In the context of a neo-traditional development a ten-foot setback seems quite large. Therefore, Staff does not find that smaller setbacks compromise the overall quality of the development.

## **I. HEIGHT:**

### **A. Enforcement Action:**

Staff believes that regulatory approvals as implemented through the Site Plan Enforcement Agreement and other post-approval documents such as the Signature Set, Development Program and Phasing Plan should be strictly enforced. The builders' position is that the heights in the Project Data Table of the Signature Set were erroneously included in that document. Even assuming for the moment this is factually true, staff does not agree with the conclusion that errors in this phase of the review process justify construction of non-compliant units. Under the express language of the Site Plan Enforcement Agreement (SPEA) all participants in the development process (from original applicant through all successive builder interests) are bound by the standards in the SPEA and attached documents (including the signature set). Thus all builders involved in the development of Clarksburg Town Center have a due diligence obligation to ensure that construction occurs in conformance with all implementing documents.

Staff recommends that pursuant to the Board's authority under Section 50-41 of the Subdivision Regulations that the Board direct staff to issue citations for each unit in each structure that exceeds the height limitation specified in the site plan signature set. For purposes of the fine, staff has assumed all townhomes, all 2-over-2s that are built or under construction, and the multi-family building (Building No. 3) exceed the Signature Set height limitation of 35' (and 45 feet for Building No. 3). Staff further recommends that for each of these units that there be one citation for each building permit application filed for these units, and a separate citation issued for the date of the commencement of construction for each of these units. Staff believes that these events reflect direct actions taken in violation of the Signature Set and Site Plan Enforcement Agreement.

Staff recommends that each of these citations be issued to Newlands in the amount of \$500.00 per unit that exceeds the height limitation in the Signature Set project data table (i.e., each unit within a 2-over 2 building, or a multifamily building, should be assessed an individual fine).

Staff also recommends that each individual builder be issued two citations in the amount of \$500.00 for the same units and on the same grounds.<sup>1</sup>

Based on staff's initial recommended findings of violation, this would result in a cumulative fine of \$489,000.00 to be assessed against Newlands, and \$489,000 to be assessed against the collective individual developers.<sup>2</sup>

**B. Recommended Plan of Compliance:**

**1. Single-Family Attached and Detached Units:**

As noted in the Memorandum staff prepared in anticipation of the July 7, 2005 hearing date most of the single-family attached and detached units comply with the 45-foot height restriction imposed by the Project Plan approval (Planning Board Opinion dated March 3, 1998). Staff strongly recommends that the Board find, with respect to those residential units that were built below 45 feet in height, that the original Master Plan vision has been implemented as envisioned by the original Project Plan approval<sup>3</sup> and subsequent Site Plan Opinion,<sup>4</sup> and, as such, corrective action should be implemented through amendment of the post-approval implementing documents.<sup>5</sup>

CTCAC has requested certain specific corrective actions. First CTCAC has requested stop work orders on the project.<sup>6</sup> Staff does not recommend that stop-work

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<sup>1</sup> Section 50-41 of the Subdivision Regulations authorized the Board to issue a fine in the maximum amount of \$500.00 per day against the person charged for each day that the violation has occurred.

<sup>2</sup> Staff continues to determine precisely which units are in violation. The numbers recommended above are based on staff's preliminary analysis, and the actual amount of the cumulative fine will be determined by the time the Plan of Compliance is finalized, as discussed below.

<sup>3</sup> Four story, 45-foot height limit.

<sup>4</sup> The Site Plan Opinion adopts a four story height limit. Staff finds this limitation consistent with, and not an amendment to, the the four story, 45-foot height limit adopted by the Board in the underlying Project Plan.

<sup>5</sup> The Board makes a finding of conformance with the Master Plan at the time of Project Plan, not at Site Plan. Montgomery County Code § 59-D-2.42. At Site Plan, the Board simply must find that the site plan "is consistent with an approved . . . project plan." Montgomery County Code § 59-D-3.4.

<sup>6</sup> The Board should know that as of June 6, 2005, the developers within the Clarksburg Town Center voluntarily suspended all new construction pending a Board decision on these violations.

orders should be issued for any of the single-family attached units based on staff's conclusion that they do not violate the underlying Project Plan conditions of approval.

CTCAC also has asked that future development of all residential units be limited to a 35-foot height limit, which staff also concludes is not appropriate, based on staff's reasoning in its staff report of July 27, concluding that the 45-foot height limit for all residential units conforms to Project Plan height limit imposed by the Board and in fact conforms with the Master Plan recommendations for this project.

Staff does recommend that timely corrective action be taken to remove any cloud of title from all single-family units (built; unbuilt and under contract; and unbuilt with no contract). To implement this corrective action, staff recommends that Newlands submit a revised set of Project Plan drawings, and a revised Site Plan Enforcement Agreement and related Signature Set that accurately reflects the height for single-family attached and detached units, consistent with the Board's original approval at the time of project plan, i.e., 4 stories (45 feet). This process (1) will confirm that these units have been built in conformance with the original approval; (2) will remove any cloud of title from all of these units; and (3) can be implemented quickly, so as to protect the equity interests of innocent third-party purchasers who currently live in these units and who have contracted to purchase unbuilt units.

## 2. 2 Over 2s

Only four buildings containing 2 over 2s are included in the phases of Clarksburg Town Center that have been approved to date. The builder for all four is Craftstar. Three of the four buildings, containing a total of 26 units, have been built, are occupied, and exceed the 45-foot height limit established by the Project Plan Opinion. The units in the unbuilt building already have third-party contract purchasers, some or all of whom have made personal plans in reliance on those units being built. As stated above, Staff recommends that a fine be collected for each of the built units. Staff further recommends that fines be collected for the 16 units in the remaining building, but that construction be allowed to proceed as planned so that third-party purchasers, who bought in good faith, will not be harmed.<sup>7</sup> The record includes evidence from such purchasers who would suffer financial and personal hardship and should not be penalized. Staff recommends that the Board authorize Staff to approve a revised Signature Set that includes the existing three buildings, and the unconstructed building, at the height at which they received building permits. This process (1) will confirm that these units have Planning Board approval to remain at their current heights;<sup>8</sup> (2) will remove any cloud of title from all of

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<sup>7</sup> As noted earlier, the builders earlier agreed not to begin construction on units that potentially violated height limits.

<sup>8</sup> At the time of Site Plan, the Board must determine that it is "consistent with" an approved project plan. Montgomery County Code § 59-D-3.4. In the opinion of staff, the height overages on these three buildings is *de minimus* in the context of the overall project, and should be found consistent with the overall Project Plan approval.

these units; and (3) can be implemented quickly, so as to protect the equity interests of innocent third-party purchasers who currently live in these units and who have contracted to purchase unbuilt units.

### **3. Multi-Family Units:**

#### **a. Built Units**

The Project Plan height limit of 4 stories and 45-feet ~~for~~ applies to multi-family units. One multi-family building has been built that exceeds the 45-foot height limit (Building No. 3, a four-story, 30-unit multi-family building that is more than 53-feet tall). As above, Staff believes that timely corrective action be taken to remove any cloud of title from the units in this structure, through the Board's direction that the builders submit Project Plan drawings and a Site Plan Signature Set that expressly authorizes these height limits. Again, the Staff recommends this remedy on behalf of the third-party purchasers who now occupy these units, and to ensure that there is no cloud on their property as a result of the non-compliant height of the building.

#### **b. Unbuilt Building No. 6 (30-unit multi-family building)**

One multi-family unit building (Building No. 6 with 30 units) has been approved but is not yet under construction. It is identical in design to Building No. 3 and also will exceed the 45-foot height limitation. The Plan of Compliance should require that this building be redesigned to conform to the 45-foot height limitation.

## **II. Setbacks**

### **A. Citations:**

Staff has recommend that the Board find that those units that are built less than 10 feet from the street violate the 10-foot front setback standard. Staff further recommends that for each of these units there be one citation issued for each building permit application filed for these units, and a separate citation issued for the commencement of construction for each of these units. Staff believes that these events reflect direct actions taken in violation of the Signature Set and Site Plan Enforcement Agreement.

Staff recommends that each of these two citations be issued to Newlands in the amount of \$500.00 per unit that exceeds the front-yard setback, and also recommends that each individual builder be issued two citations in the amount of \$500.00 for the same units and on the same grounds.<sup>9</sup>

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<sup>9</sup> Section 50-41 of the Subdivision Regulations authorized the Board to issue a fine in the maximum amount of \$500.00 per day against the person charged for each day that the violation has occurred.

Staff recommends that fines be assessed whether the building is a single family attached or detached dwelling or a multi-family building. The fine against Newland will be \$102,000. The fine against the builders will be a total of \$102,000. The cumulative fine will be \$204,000.

**B. Plan of Compliance Recommendations:**

Staff recommends that all unbuilt units, except for those under a purchase contract to a third-party purchaser pre-dating June 6, 2005,<sup>10</sup> be required to conform to a 10-foot front yard setback standard.

Additionally, the Signature Set should be resubmitted with precise dimensions shown on a lot-by-lot basis for all units, to "grandfather" those units that have a setback of less than 10 (in accordance with the Board's authority to reduce setbacks to 0'), and to ensure that all unbuilt units conform with the 10' setback originally imposed.

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<sup>10</sup> The date the builders agreed that no new construction would begin on units (even with building permits) that would potentially violate either height or setback restrictions).

# Clarksburg Town Center

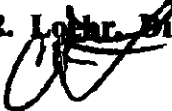
## Construction Status


	<u>Lots</u>	<u>DUs</u>	<u>Permits Issued</u>	<u>DUs</u>
<b>Started Construction</b>				
Single Family Detached	42	42	42	42
Townhouse	29	29	29	29
2 over 2	1	10	10	10
Manor Homes	2	24	2	24
Condos	0	0	0	0
<b>Near Completion or Completed</b>				
Single Family Detached	124	124	124	124
Townhouse	404	404	404	404
2 over 2	2	16	16	16
Manor Homes	0	0	0	0
Condos	4	76	4	76
<b>Total Under Construction</b>	<b>608</b>	<b>725</b>	<b>631</b>	<b>725</b>
<b>No Building Construction Started</b>				
Single Family Detached	54	54	2	2
Townhouse	69	69	10	10
2 over 2	1	16	16	16
Manor Homes	3	34	0	0
Condos	2	40	0	0
8-98001E		133	0	0
8-04034		118	0	0
<b>Total No Construction</b>		<b>464</b>	<b>28</b>	<b>28</b>
<b>Total</b>		<b>1189</b>	<b>659</b>	<b>753</b>
<b>Totals</b>				
Single Family Detached	220	220	168	168
Townhouse	502	502	443	443
2 over 2	4	42	42	42
Manor Homes	5	58	2	24
Condos	6	116	4	76
<b>Total</b>	<b>737</b>	<b>938</b>	<b>659</b>	<b>753</b>
8-98001E		133	0	0
8-04034		118	0	0
<b>Total</b>		<b>1189</b>	<b>659</b>	<b>753</b>



MCPB  
Item # 3  
07/07/05**MEMORANDUM:**

**TO:** Montgomery County Planning Board

**VIA:** Charles R. Lohr, Director, Department of Park and Planning 

**FROM:** Rose Krasnow, Chief, Development Review Division 

**SUBJECT:** PLAN OF COMPLIANCE for Height and Setback Violations

**REVIEW BASIS:** 50-41 of the Montgomery County Subdivision Regulations (Enforcement) and 59-D-3 6.6 of the Montgomery County Zoning Ordinance (Failure to Comply)

**PROJECT NAME:** Clarksburg Town Center

**CASE #:** 8-98001 & amendments and 8-02014 & amendments

**ZONE:** RMX-2

**LOCATION:** In the northeastern quadrant of the intersection of Stringtown Road and Frederick Ave (MD RT. 355), Clarksburg

**MASTER PLAN:** Clarksburg and Vicinity Master Plan

**HEARING DATE:** July 7, 2005

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### **STAFF RECOMMENDATION:**

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### **BACKGROUND:**

Staff had four overriding goals in its recommendations on the Clarksburg Town Center matter:

1. To sanction the builders, through fines, for failing to comply with the Site Plan Enforcement Agreement and Signature Set – notwithstanding the fact that they were more stringent than the Board's underlying approvals. This is designed to act as a deterrent to similar disregard for implementing documents in the future.
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<sup>7</sup> As noted earlier, the builders earlier agreed not to begin construction on units that potentially violated height limits.

<sup>8</sup> At the time of Site Plan, the Board must determine that it is "consistent with" an approved project plan. Montgomery County Code § 59-D-3.4. In the opinion of staff, the height overages on these three buildings is *de minimus* in the context of the overall project, and should be found consistent with the overall Project Plan approval.

these units; and (3) can be implemented quickly, so as to protect the equity interests of innocent third-party purchasers who currently live in these units and who have contracted to purchase unbuilt units.

### **3. Multi-Family Units:**

#### **a. Built Units**

The Project Plan height limit of 4 stories and 45-feet ~~for~~ applies to multi-family units. One multi-family building has been built that exceeds the 45-foot height limit (Building No. 3, a four-story, 30-unit multi-family building that is more than 53-feet tall). As above, Staff believes that timely corrective action be taken to remove any cloud of title from the units in this structure, through the Board's direction that the builders submit Project Plan drawings and a Site Plan Signature Set that expressly authorizes these height limits. Again, the Staff recommends this remedy on behalf of the third-party purchasers who now occupy these units, and to ensure that there is no cloud on their property as a result of the non-compliant height of the building.

#### **b. Unbuilt Building No. 6 (30-unit multi-family building)**

One multi-family unit building (Building No. 6 with 30 units) has been approved but is not yet under construction. It is identical in design to Building No. 3 and also will exceed the 45-foot height limitation. The Plan of Compliance should require that this building be redesigned to conform to the 45-foot height limitation.

## **II. Setbacks**

### **A. Citations:**

Staff has recommend that the Board find that those units that are built less than 10 feet from the street violate the 10-foot front setback standard. Staff further recommends that for each of these units there be one citation issued for each building permit application filed for these units, and a separate citation issued for the commencement of construction for each of these units. Staff believes that these events reflect direct actions taken in violation of the Signature Set and Site Plan Enforcement Agreement.

Staff recommends that each of these two citations be issued to Newlands in the amount of \$500.00 per unit that exceeds the front-yard setback, and also recommends that each individual builder be issued two citations in the amount of \$500.00 for the same units and on the same grounds.<sup>9</sup>

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<sup>9</sup> Section 50-41 of the Subdivision Regulations authorized the Board to issue a fine in the maximum amount of \$500.00 per day against the person charged for each day that the violation has occurred.

Staff recommends that fines be assessed whether the building is a single family attached or detached dwelling or a multi-family building. The fine against Newland will be \$102,000. The fine against the builders will be a total of \$102,000. The cumulative fine will be \$204,000.

**B. Plan of Compliance Recommendations:**

Staff recommends that all unbuilt units, except for those under a purchase contract to a third-party purchaser pre-dating June 6, 2005,<sup>10</sup> be required to conform to a 10-foot front yard setback standard.

Additionally, the Signature Set should be resubmitted with precise dimensions shown on a lot-by-lot basis for all units, to "grandfather" those units that have a setback of less than 10 (in accordance with the Board's authority to reduce setbacks to 0'), and to ensure that all unbuilt units conform with the 10' setback originally imposed.

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<sup>10</sup> The date the builders agreed that no new construction would begin on units (even with building permits) that would potentially violate either height or setback restrictions).

# Clarksburg Town Center

## Construction Status

	<u>Lots</u>	<u>DUs</u>	<u>Permits Issued</u>	<u>DUs</u>
<b>Started Construction</b>				
Single Family Detached	42	42	42	42
Townhouse	29	29	29	29
2 over 2	1	10	10	10
Manor Homes	2	24	2	24
Condos	0	0	0	0
<b>Near Completion or Completed</b>				
Single Family Detached	124	124	124	124
Townhouse	404	404	404	404
2 over 2	2	16	16	16
Manor Homes	0	0	0	0
Condos	4	76	4	76
<b>Total Under Construction</b>	<b>608</b>	<b>725</b>	<b>631</b>	<b>725</b>
<b>No Building Construction Started</b>				
Single Family Detached	54	54	2	2
Townhouse	69	69	10	10
2 over 2	1	16	16	16
Manor Homes	3	34	0	0
Condos	2	40	0	0
8-98001E		133	0	0
8-04034		118	0	0
<b>Total No Construction</b>		<b>464</b>	<b>28</b>	<b>28</b>
<b>Total</b>		<b>1189</b>	<b>659</b>	<b>753</b>
<b>Totals</b>				
Single Family Detached	220	220	168	168
Townhouse	502	502	443	443
2 over 2	4	42	42	42
Manor Homes	5	58	2	24
Condos	6	116	4	76
<b>Total</b>	<b>737</b>	<b>938</b>	<b>659</b>	<b>753</b>
8-98001E		133	0	0
8-04034		118	0	0
<b>Total</b>		<b>1189</b>	<b>659</b>	<b>753</b>



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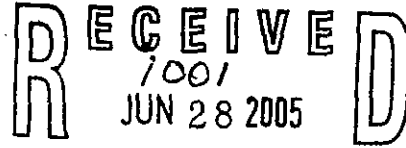
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WRITER'S DIRECT DIAL

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NORMAN G. KNOPF

June 28, 2005



Via Courier

Derick Berlage, Chairman  
and Members of the Board  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, MD 20910

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION  
**FOR IMMEDIATE  
DISTRIBUTION AND  
DISCUSSION BY THE  
BOARD**

Re: **Clarksburg Town Center - Reconsideration Hearing**  
**Site Plan Review Nos. 8-98001 and 8-02014**

Dear Chairman Berlage and Members of the Board:

This letter is sent on behalf of the Clarksburg Town Center Advisory Committee ("Committee") to request substantive and procedural changes for the hearing on reconsideration before the Board on July 7, 2005. These changes are essential in order for the Board to have before it all the necessary facts to make a determination as to any violation of the approved Planning Board plans, the appropriate penalties, and remedies for such violations. The failure to adopt these changes will not only deprive the Board of necessary information, but will be reviewed by our clients and other County residents as unfair procedures designed to prevent full disclosure of possible wrongdoing.

**I. Substantive Changes**

We understand the subject matter to be addressed at the hearing is limited to possible height and setback violations. These apparent violations were called to your attention by the Committee and resulted in the Board's adoption of a motion for reconsideration resulting in the July 7<sup>th</sup> hearing. Since the grant of reconsideration, the Committee has obtained further evidence indicating possible substantial violations and the improper conduct in other areas. All possible violations and improper conduct should be made the subject of the hearing.

We request that the subject matter of this hearing be expanded to include at least each of the areas set forth in our attached summary of areas of apparent impropriety.

1. **Building Height Violations**
2. **Setback Violations**

3. **Removal of Essential Plan Features - including major changes in effect eliminating "O" street and the pedestrian mews connecting the Church and historic district to the new Town Center**
4. **Amenity Phasing – including the apparent failure to provide amenities in accordance with the phasing plan contained in the Site Plan Enforcement Agreement and failure to enforce phasing stipulations pursuant to the Site Plan Enforcement Agreement**
5. **The Improper MPDU Segregation of Units – rather than integrating them in accordance with Site Plan and County policy.**
6. **Improper Staff Conduct Including Alteration of Plans**

Until all areas of possible improper conduct are fully explored and findings made by the Board as to the specific violations, it is not possible for the Board to make a reasonable decision as to what sanctions should be imposed and what remedies implemented. We are greatly concerned that the hearing, as presently proposed seems to "pigeon hole" each area, with a decision as to penalties and remedies to be made without consideration of the entire situation. Thus, the hearing should not be limited to just building height and setback violations.

## **II. Procedural Changes**

We understand that the proposed hearing will be held according to the Board's usual rules – 3 minutes of testimony per person and pooling of time to about 15 minutes. Such time limits are unacceptable and guarantee that the Committee will be unable to present the voluminous evidence which is so essential for a full exploration of possible wrongdoing. To provide the Board with the necessary information and the development of a full record, it is also essential that the Committee have the ability to ask questions of certain staff members and others. Further, it is also essential that the Committee have an opportunity to respond to or rebut the testimony of the developers and their attorneys. (We note that the developers have also asked for additional time.)

Accordingly, we request the following:

1. The Committee be permitted to make its presentation immediately after the staff presentation and prior to developer testimony.
2. The Committee be assigned at least 2 hours of time in order to:
  - a. Make an opening presentation
  - b. Question staff members and other witnesses

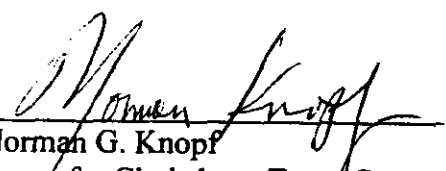
c. Respond/rebut testimony of others

3. Staff members Wynn Withans and Wayne Cornelius be available for questioning.
4. The Board request Les Powell, an engineer for Newland, to be present so that he may be questioned.
5. The Board make no decision on sanctions for violations or remedial action until the Board has before it all the necessary information to determine if there is any improper action in any of the above-referenced subject matter areas or in other areas that become relevant through this hearing. This may result in the Board having to continue the hearing until such information is obtained. We note that the Board has set July 21<sup>st</sup> for another hearing for matters relating to Clarksburg's Site Plan.

We thank the Board for consideration of our proposal and look forward to the Board adopting this as our first step toward rehabilitating the integrity of the planning process by providing a full and fair hearing.

Sincerely yours,

KNOPF & BROWN

By:   
Norman G. Knopf  
Attorneys for Clarksburg Town Center  
Advisory Committee

/enclosure

cc: County Council  
Charles Loehr, Director, MNCPPC  
Michele Rosenfeld, Esq., MNCPPC  
Rose Krasnow, Chief, Development Review, MNCPPC  
John A. Carter, Chief, Community-Based Planning, MNCPPC  
Barbara A. Sears, Esquire  
Todd D. Brown, Esquire  
Timothy Dugan, Esquire  
Robert G. Brewer, Jr., Esquire  
Clarksburg Town Center Advisory Committee

# Clarksburg Town Center Development – Issues and Discrepancies

Issue / Discrepancy	References / Documents	Comments / Questions
<p><b>Rampant Height and Setback Violations</b> – Hundreds of houses (townhouse and multi-family units) have been built at heights far in excess of Planning Board-prescribed heights, and in breach of Planning Board-prescribed minimum setback requirements.</p>	<p><b>Note:</b> The Site Plan Enforcement Agreement was prepared and submitted by Todd Brown, Linowes &amp; Blocher, and signed by Joseph R. Davis and Michele Rosenfeld on behalf of M-NCPPC on May 12, 1999. Subdivision Plat Records (as currently on file with the County) for all homes within Phase I &amp; II were platted against Site Plan Enforcement Agreement #8-98001. These records contain signatures of the M-NCPPC Chairman and the Developer on each. The Site Plan Enforcement Agreement, the Plat Records and Project and Preliminary Plans (which also contain the same height and setback standards) are public record, legally binding documents known to M-NCPPC Staff, Chairman, and Legal Counsel, as well as Developer and Developer Counsel, Todd Brown.</p> <p><b>Site Plan Enforcement Agreement (Attachment A):</b>  <b>“Exhibit “C” – Certified Site Plan”</b>  The Certified Site Plan attached to the Site Plan Enforcement Agreement contains the approved data table with height restrictions of 35’ for single family, detached, townhomes and courtyard townhomes, and 45’ for multi-family units; and front yard minimum setbacks of 10’ for single family, detached, townhomes, courtyard townhomes and multi-family units. The Site Plan Enforcement Agreement confirms that what was approved and adopted by the Board at the time of the Site Plan hearing included specific height and setback restrictions.</p> <p><b>January 25, 2005 Letter from Wynn Wittbans to Mr. William Roberts of Miller and Smith (Attachment B):</b>  This letter specifically amends the setback requirement for the Miller and Smith unit discussed. The letter states:  <i>“Attached is the minor plan amendment to revise the front yard setback of Lot 15FF from 10 feet to 8 feet. This amendment is necessary to amend a 2-foot by 12.5 foot foundation layout field mistake.”</i>  <i>“... The Planning Board previously waived the unit to street setbacks for the original approval (from 30 feet to 10 feet)...”</i></p>	<p>As to height restrictions, there are no height amendments on file with M-NCPPC that would legally alter what is present within the Site Plan data table. M-NCPPC Staff stated during the April 14, 2005 Hearing, “I made no amendments to height.” Neither the Developer nor the Developer’s counsel presented any valid height amendment information during the hearing. Neither the Developer nor the Developer’s counsel has presented to date any valid records that would dismiss the legally binding height restrictions present within the Site Plan Enforcement Agreement.</p> <p>As to setback restrictions, the presence of the specific setback amendment as issued by Staff, with language citing original Board adoption of specific setback restrictions indicates 1) that the Planning Board did indeed adopt a 10’ front yard setback (reduced from the original 30’) which Staff was still acknowledging as late as January, 2005, and 2) that an amendment would be necessary to change setbacks for any unit to allow reduction from the originally approved setback restrictions (as depicted on the Certified Site Plan data table).</p> <p>The Site Plan and Site Plan Enforcement Agreement, by way of incorporating the Certified Site Plan data table, legally obligate the Developer to adhere to the restrictions present within the data table. Why is there any question as to the governing restrictions for height or setback? These documents have always been available to Staff, and to the Developer and its counsel, and should have been used as the reference to provide answers to the questions posed by the CTCAC from August, 2004 through present. Minimally, they should have been referenced by Staff and Developer counsel at the April 14, 2004 hearing. Instead, for a period of over 10 months from the first inquiry by CTCAC to present, the CTCAC has been evaded, distracted and given the runaround while Staff and Developer representatives embark upon a plan to amend the legally binding requirements they recognize to be present in the approved Project Plan, Preliminary Plan, Site Plan, and Site Plan Enforcement Agreement. Despite attempts to present the records as “messy” or “ambiguous” the project requirements are clear to this day within those legally binding documents. It is essential for the integrity of the planning process that the Board ascertain all of the facts and impose appropriate penalties. Wrongful conduct must not be sanctioned through Board approval of amendments that simply paper-over blatant violations with disregard for the planning process.</p>

# Clarksburg Town Center Development – Issues and Discrepancies

Issue / Discrepancy	References / Documents	Comments / Questions
<p><b>Removal of Essential Planned Features –</b> Planned and approved features, such as “O” street (behind the Church) and the diagonal Pedestrian Mews (connecting the Church and historic district to the new Town Center) have been arbitrarily eliminated.</p>	<p><b>Site Plan Review #8-98001 – Staff Report from Wynn E. Witthans to the Montgomery County Planning Board, January 16, 1998 (Attachment C):</b>  <i>Page 10 – “Close to the edge of the Clarksburg Historic District, is a diagonal pedestrian mews. The mews contains sitting areas and two large lawn panels and connecting walks, linking the church with the Town Square. The sitting area closest to the Town Square includes a trellis and a memorial to John Clark with the use of found headstones from the family grave site. The mews develops a visual and walkable axis between the church and the Town Square, highlighting these significant features of the existing and proposed development”</i>  <i>Page 11 – “The extension of “O” street, perpendicular to Main Street, connects to the adjoining parcels to the south.”</i></p> <p><b>Site Plan #8-98001 – Montgomery County Planning Board Opinion, March 3, 1998 (Attachment D):</b>  <i>Page 5, Condition #20 – “Dedication and construction of “O” Street extended to occur prior to the recordation of the last lot in the entire project or when the dedication of “O” Street by the adjacent property owners is made in conjunction with future development proposals.”</i></p> <p><b>Site Plan Enforcement Agreement (Attachment A):</b>  <u>“Exhibit “B” – Development Program”</u>  <i>B-6 (v) “Developer shall dedicate and construct “O” Street extended prior to the recordation of the last lot in the entire project or when the dedication of “O” Street by the adjacent property owners is made in conjunction with future development proposals.”</i>  <u>“Exhibit “C” – Certified Site Plan”</u>  The Certified Site Plan attached to the Site Plan Enforcement Agreement shows both “O” Street and the Pedestrian Mews.  <u>“Exhibit “D” – Certified Landscape and Lighting Plan”</u>  Sheet L-2 of 25, signed by S. Klebanoff on March 8, 1999 and approved and signed by Joseph R. Davis on May 13, 1999, depicts detail of both “O” Street and the Pedestrian Mews. The detail contained in the landscaping plan includes specific plantings along “O” Street and the Mews area, as well as indication of hardscape detail for the Mews.</p>	<p>One of the key goals of the Clarksburg Town Center Master Plan was the integration of historic Clarksburg with the new Clarksburg Town Center. Integral to this goal was the establishment of a visual and walkable vista connecting the Town Square area to the Church and historic district. Additionally, placement of the John Clark memorial within the Mews was a means of honoring the Clark family – essentially establishing a piece of historical Clarksburg within the extended Clarksburg (the new Town Center). “O” Street was intended to create a buffer between the new homes and the Church, while adding a connecting walk to link the Church with the Town Square.</p> <p>What has been done to the Community instead? The Developer has eliminated “O” Street, has constructed an asphalt road where the Pedestrian Mews was intended to be, and will be moving the John Clark memorial location to an area away from the Town Square. The Church spire is now barely visible from the Town Square area, the Mews is nothing more than a road flanked by townhouses, and the John Clark memorial will likely not be host to the pedestrian gathering that the Mews would have afforded it.</p> <p>Removal of these fundamental features constitutes a grievous loss to the Town Center and Clarksburg Community at large. The Certified Site Plan #8-98001 depicts “O” Street and the Pedestrian Mews. The Site Plan Enforcement Agreement (by way of inclusion of the Exhibits and by specific language as to the dedication of “O” street) legally binds the Developer to provide these features, yet the Developer removed them. How did this happen? Staff was questioned by CTCAC as early as September, 2004 on this issue and was not given a reasonable explanation. There was no public amendment hearing on the removal of these crucial features. There was no record found within Staff files to explain the Developer’s injudicious removal of these essential elements from the Town Center.</p> <p>The CTCAC would like an explanation as to the removal of these features. The Clarksburg Civic Association, members of the Church, and the members of the Clarksburg Community (those who spent nine plus years helping to shape the Master Plan) deserve an explanation. The entire CTC and greater Clarksburg Community expect the Planning Board to conduct a full hearing on July 7, 2005, with complete exploration of these issues, to enable discovery and to determine how it can ameliorate the situation.</p>

**Clarksburg Town Center Development – Issues and Discrepancies**

Issue / Discrepancy	References / Documents	Comments / Questions
<p><b>Amenity Phasing Violation</b> – The Developer has failed to provide the amenities in accordance with the Phasing Plan contained in the Site Plan Enforcement Agreement. M-NCPPC has failed to enforce the Phasing Stipulations pursuant to the Site Plan Enforcement Agreement.</p>	<p><b>Site Plan Enforcement Agreement (Attachment A):</b>  <b>“Exhibit “E” – Phasing Plan”</b>  <i>1. General: (b) “All community-wide facilities within Site Plan 8-98001, must be completed and conveyed to the Association no later than the earlier of the receipt of a building permit for the 540<sup>th</sup> Lot/Unit or by fifteen (15) years from the date of the Site Plan Approval (“Community-Wide Facilities Completion Date”). All remaining common areas must be conveyed to the Association on or before the Community-Wide Facilities Completion Date.”</i>  <i>2. Stipulations: (b) “Developer must construct all recreational facilities and convey such facilities and common areas within the timeframes contemplated in the Phasing Schedule and in these binding elements. Developer must arrange for inspections by Staff to ensure that all facilities are timely, correctly and completely constructed.”</i>  <i>(e) “Unless the Planning Board has agreed to modify the Phasing Schedule, the Developer’s failure to timely complete and turn over facilities and common areas shall operate to preclude Developer from receiving any additional building permits for that particular phase and all remaining phases until such time as the default is cured.”</i></p>	<p>Contrary to Todd Brown’s letter of June 24, 2005 to Rose Krasnow, in which he references “%” of occupancy as relative to the completion of recreational facilities, it is the <b>issuance</b> of the 540<sup>th</sup> building permit (as noted within the Site Plan Enforcement Agreement #8-98001) that is the trigger date for conveyance of all amenities in Phase I to the HOA. Arguably, based on plat records tying all plats within the subdivision to Site Plan Enforcement Agreement #8-98001, it could be deemed the trigger date for conveyance of Phase II amenities as well. This Site Plan Enforcement Agreement does not reference “occupancy” or completion of phases as the trigger, it references “issuance” of permits. Although Mr. Brown fails to mention in his letter to Ms. Krasnow this Site Plan Enforcement Agreement Phasing Plan and Stipulations, that does not change the fact that his client, Newland, is legally bound by the terms of that Agreement.</p> <p>We are past the issuance of the 540<sup>th</sup> building permit for CTC and yet the pool has not opened, and many of the other community-wide facilities have not been completed. The Board has failed to act on its enforcement responsibility under the “Stipulations” of the Site Plan Enforcement Agreement. The CTCAC expects the Board to address this issue fully at the hearing, and to act immediately to stop the issuance of all permits until the “default is cured.”</p>
<p><b>Inconsistencies in MPDU Calculations</b> – The Phasing Calculations received by CTCAC from M-NCPPC on June 10, 2005 do not reconcile with current units within CTC. It appears, based on plans submitted, that there will be a concentration of MPDU units within the Town Square area, virtually segregating MPDUs rather than integrating them equally throughout the Town Center.</p>	<p><b>MPDU Location Plan (Attachment E):</b>  The MPDU Location Plan signed March 27, 2003 by Terry Graves for the Developer and stamped by Richard Hawthorne on October 14, 2004, depicts an MPDU calculation based on 1300 total units. Additionally, the Plan shows “22+” MPDUs slated for the “Commercial/Residential” area, as well as “21+” and “21+” in Phase IA4 directly across from the “22+”</p>	<p>Based on calculations present within the MPDU Location Plan, and the assumption of approval of the planned 36-unit multifamily dwelling within the Town Square area (adjacent to Library), the resulting MPDU segregation/concentration would be in breach of Council and Board policy to have MPDUs dispersed among the market rate units.</p> <p>Additionally, the CTCAC notes that the Developer pre-supposes (as early as March, 2003) that an amendment to allow residential units within the commercial area will be granted. The CTCAC is initially alarmed by the potential for segregation of MPDUs, but has not researched the MPDU situation in depth due to lack of information available. We expect that the Board would “audit” the current phasing plan and units on site to provide an accurate report. We also expect that the Board would not approve supplemental residential units in the retail area.</p>

# **Clarksburg Town Center Development – Issues and Discrepancies**

Issue / Discrepancy	References / Documents	Comments / Questions
<p><b>Fraudulent and Dubious Documentation and Practices</b> – Multiple evidences have been unearthed by CTCAC that point to Staff malfeasance, with potential complicity, and beg further investigation.</p>	<p><b>1. <u>Altered Phase 1B3 Site Plan and Actual Phase IB3 Site Plan (Attachments F1 &amp; F2)</u></b> – Staff admitted (as reported by Charlie Loehr to the CTCAC) to having crossed out the heights on the data table “in the fall of 2004”. This took place <i>after</i> buildings were built and occupied, after the height issue was brought to Staff’s attention by the CTCAC in August, 2004, and prior to the April 14, 2005 hearing. “Clean” Phase 1B3 Site Plan (attached) was recovered at DPS (within April, 2003 landscaping plans submission).</p> <p><b>2. <u>Phase II Site Plan:</u></b></p> <p><b>2a. Site Plan Review Phase II - #8-02014 – Staff Report from Wynn E. Witthans to the Montgomery County Planning Board, dated May 2, 2002 (Attachment G): Pages 10-G &amp; 10-H</b> – Includes a copy (reduced size) of Site Plans for 8-02014 which show the data table with height and setback restrictions as approved and adopted in the Phase I Certified Site Plan (containing the same height limits of 35’ and 45’ and front yard minimum setback of 10’).</p> <p><b>2b. DRC Transportation Planning Comments, dated November 19, 2001 (Attachment H)</b> – The DRC notes file for 8-02014 also contains a reduced size Phase II Site Plan (signed April 26, 2001 by Tracy Graves, and April 27, 2001 by Ronald Collier, Professional Land Surveyor and Les Powell, CPJ) showing the same height and setback limits as the Phase I Certified Site Plan.</p> <p><b>2c. Site Plan Phase II (Attachments I, J, K &amp; L)</b> – The Site Plan was approved by the Board on May 9, 2002. It would be expected that the Signature Site Plan Set would have an approval date prior to or near May, 2002. However, the only Site Plan Phase II “signature set” (<b>Attachment I</b>) found on file with M-NCPPC is signed by the Developer on March 27, 2003, with an approval by Richard Hawthorne (stamp) on <b>October 14, 2004</b>. With this “signature set” the file contained a <b>Site Plan Enforcement Agreement (Attachment J)</b> and a <b>Phase II Landscaping Plan (Attachment K)</b> approval stamped by Richard Hawthorne on October 14, 2004. Minor Revisions to Site Plan Phase II, labeled “Pool and Plaza” (<b>Attachment L, Pages L1-6</b>) have conflicting signatures by Wynn Witthans, some dated November 12, 2002 and some dated November 12, 2003 within the same set.</p>	<p><b>1.</b> CTCAC would like to know the motivation for Staff’s alteration of the Site Plan, and subsequent presentation of fraudulent documentation and false testimony to the Board at the April 14, 2005 hearing, to cover over the Developer’s violations. The CTC community and Montgomery County citizens at large expect a full exploration, examination and reporting of this matter at the July 7, 2005 hearing.</p> <p><b>2.</b> The Board hearing on the Phase II Site Plan was held May 9, 2002 and the Board Opinion issued on June 17, 2002. Why is the <i>alleged</i> Site Plan Signature set on record with M-NCPPC, on which the Staff would have based its Staff Report and the Board issued its opinion, dated October 14, 2004 – two years and four months after the Board approval? This is incongruent and demands explanation. The information (copy of Site Plans within the Staff Report and DRC Review) retrieved by CTCAC contradicts the validity of an October 14, 2004 approval date. Also, CTCAC has confirmed that units contained within the Phase II Site Plan were, in actuality, permitted, built and occupied prior to the October 14, 2004 date. How could Counsel not have known this when submitting a “Site Plan Enforcement Agreement” against a signature set for buildings already occupied? Of note, this Site Plan is absent height restrictions and is therefore, under Zoning Ordinance 59-D-3.23, not a valid Site Plan. Additionally, there exists (Attachment L1-6) an amendment signed by Kimberly N. Ambrose on November 12, 2003. The set of documents, pages 1-6, are also signed by Wynn Witthans, with some dated November 12, 2002 and some dated November 12, 2003. (Was Staff in a hurry when signing these?) Either date (i.e. November 2002 or 2003), whichever of the two one contends is the actual date, does not align with the Phase II Site Plan “Signature Set” approval date of October 14, 2004. How can the Board Staff approve an “amendment” pre-dating the approval of the “signature set” Site Plan? Having not been able to find what the CTCAC believes must exist in terms of a Signature Site Plan reasonably concurrent in date with the actual Board approval for Phase II, and suspecting cover-up activity much like that admitted by Staff pertaining to the Phase IB3 Site Plan, the CTCAC expects the Board to conduct a thorough examination of Staff during the hearing to allow for discovery, reconciliation of information and reporting on the matter.</p>

# **Clarksburg Town Center Development – Issues and Discrepancies**

Issue / Discrepancy	References / Documents	Comments / Questions
<p><b>Fraudulent and Dubious Documentation and Practices (continued)</b></p>	<p><b>3. Emails between Todd Brown and Wynn Witthans on March 25, 2005 and April 12, 2005 (Attachment M) –</b>  From Todd to Wynn:  <i>March 25 - "...per our discussion, we intend to file the following with the Project Plan Amendment application."</i>  <i>April 12 (Regarding: Project Plan Amendment Filing Fees) – "Wynn, unit count in retail area is 120 units..."</i>  From Wynn to Todd:  <i>March 25 - "The list looks good – we will have to go to DRC so the number of sets must conform to that type of distribution for all but the application statement in book form..."</i></p> <p><b>4. Site Plan Phase IB Part 2 - Minor Revision (Attachments N1 and N2) –</b> CTCAC retrieved a copy of Phase IB Part 2 Site Plan (Attachment M1) from Staff files some time prior to August 26, 2004. CTCAC subsequently received a copy of the "same" Phase IB Part 2 Site Plan (Attachment M2) from Staff files the week following the April 14, 2005 Height Threshold Hearing (reference CTCAC history document for significance of chronology). These two documents, although duplicates, both signed by Tracy Graves (Developer), Ronald Collier (Surveyor), and Les Powell (CPJ) on June 28, 2001 and approved/signed by Wynn Witthans on August 3, 2001, have differing height information and differing Amendment numbers (handwritten variations – i.e. manually overwritten.)</p> <p><b>5. Signatory Issues – Multiple Questionable Signatures</b>  Tracy Graves signature on multiple documents including Phase II "Site Plan Signature Set" (Attachment I) appear to be copies of the same signature block with dates only changed, while her signature on Phase II Landscaping Plan (Attachment K) appears to be completely original.</p> <p><b>6. Overall interaction with CTCAC by Board Staff –</b>  It is evident that dealings with the CTCAC by Board Staff have been evasive and deliberately misleading (reference CTCAC History Document).</p>	<p><b>3.</b> The Committee was outraged to learn that while the Developer, the Developer's Counsel, and Board Staff sat through the April 14, 2005 hearing, they were all well aware that behind the scenes they had already begun processing an amendment request to the very "development standards" they claimed allowed them to build with "4 stories" as the only limitation. At best, the citizens find this deceptive. The Board should be equally outraged, if it was not already aware of this intent by the Developer. The CTCAC demands full exploration and disclosure by the Board on this issue, with consideration of intent by Developer when determining appropriate remedial actions.</p> <p><b>4.</b> The CTCAC has in its file a "clean" Site Plan, labeled "Minor Revision 8-98001B", of which the Staff was apparently unaware when changes were made to the Staff's copy. On the copy found in the Staff files, Staff has manually altered the "Minor Revision" to read 8-98001"A" by overwriting the "B" in pen, and the height data table by overwriting the heights with the words "4 stories." Existence of the "clean" Plan proves changes were made (as with the Phase IB3 Site Plan) after the fact and not as valid amendments. Both Staff and Developer representatives began collusively using a "4 stories" terminology in discussions and meetings (reference CTCAC History Document) with the CTCAC in October, 2004. It is alarming to note that discrepancies and questionable actions align with a "Fall 2004" timeframe. The CTCAC demands questioning of Staff, examination of documents, and Board finding on these issues at the July 7, 2005 hearing. Anything less will appear as a cover-up attempt.</p> <p><b>5.</b> What is the legality of a signature copy versus an actual signature by the Developer representative? When did Tracy Graves cease being the signatory for the Developer (in view of Newland Acquisition)? Is Tracy still with Newland? If so, what is her authority? All questions to which CTCAC would like answers at the July 7, 2005 hearing.</p> <p><b>6.</b> Evasions by the Board Staff, and the Board's apparent unwillingness to comprehensively address all issues pertaining to CTC Development, lead CTCAC and the community to believe that the Developer's interests are of much more concern to the Board than those of the tax-paying citizens. CTCAC would like to see these practices and the specific processes within M-NCPPC changed to reflect concern for and representation of the community at large.</p>



LAW OFFICES OF

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DAVID W. BROWN

June 28, 2005

VIA COURIER

Derick Berlage, Chairman  
and Members of the Board  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, MD 20910

RECEIVED  
0996  
JUN 28 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Re: **Clarksburg Town Center - Site Plan Review**  
**Nos. 8-98001 and 8-02014**  
**Building Height Violation Reconsideration Hearing**

Dear Chairman Berlage and Members of the Board:

This letter supplements my June 21<sup>st</sup> letter to the Board in order to respond to the June 22, 2005 letter from Bozzuto Homes, Inc. ("Bozzuto"). In my June 21<sup>st</sup> letter, p.5, I suggested to the Board that it would have to "suspend disbelief" in order to accept the notion that highly skilled and able counsel for Newland Communities would submit for final approval site plans with considerably more restrictive standards than approved by the Board. A day later, Bozzuto, represented by the same able law firm as Newland, effectively asks the Board to do just that. Bozzuto offers the Board a letter from Charles P. Johnson & Associates, Inc., their planning and engineering firm. This letter is the first attempt, after many months of silence on this obvious question, to explain away the explicit building heights on the Phase I Site Plan and its sub-phases, heights that precisely tracked those on the final, approved Preliminary Plan. According to CPJ, the data table was on the Site Plans, not because it accurately reflected the height limit, which had been "superseded [by] the four-story limitation," but rather because **"the data table had been identified as the one to place on the site plan by staff."** Exhibit D to Bozzuto Letter (emphasis added). In other words, despite long-standing practice that signature set development standards are controlling, developers placed invalid, "superseded" requirements on the signature set because the staff told them to.

In considering this response, words fail in depicting its contempt for the Board's ability or willingness to separate fact from fiction. It is simply incomprehensible that experienced developer counsel would allow the developers to put at risk the construction of hundreds of homes by knowingly placing on the signature set superseded, more restrictive site plan development standards. The far more cogent and credible explanation, one consistent with the "long-standing course of administrative actions," Bozzuto Letter 3, is that Bozzuto believed before construction that, at the appropriate time after construction, Project Plan and Site Plan Amendments would quietly be approved, effectively ratifying the illegal construction, especially since no one on the

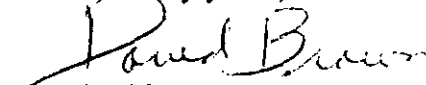
Derick Berlage, Chairman  
and Members of the Board  
June 28, 2005  
Page 2

Board staff was exercising its responsibility to check building heights. And so the Board was recently asked by Newland to approve Project Plan Amendments that do exactly that, under the guise of "provid[ing] a clear set of development standards applicable to the project." Application for Project Plan Amendment No. 9-94004A.

Why did Bozzuto think this "course of dealing," Bozzuto Letter 3, would work? Because it had in the past? Because it had staff assurance that the staff's view of a proper height standard --four stories--could be imposed behind closed doors notwithstanding what the Board approved? And what motivated the staff to flout the Site Plan standards, even the point of one staff member covering up his/her actions after the fact with lies and altered Site Plans? None of the answers to these questions is self-evident from the records available to the Committee, but as important as they may be to future events, they do not figure in the burden of proof the Chairman believes applies to the Committee in this case. However they are answered, the bottom line is the same: hundreds of homes built in violation of signature set site plan standards.

Two other points in the Bozzuto letter warrant brief comment. First, Bozzuto effectively adopts as its own the various arguments in the June 10<sup>th</sup> Newland Letter. Bozzuto Letter 1. The critique of that letter, set forth in my June 21<sup>st</sup> letter, is therefore equally applicable to Bozzuto. Second, Bozzuto accuses the Committee of "improperly fail[ing] to disclose" to the Board that "the Phase IB- Part 3 Site Plan was submitted as a part of a complete building permit application package filed with DPS." Bozzuto Letter 2. This is followed by a depiction of what the building permit application was for: a four-story, 53' high building. Id. Bozzuto claims that the Committee's "selective submission fails to disclose" this fact. Id. The relevant question here is simple: regardless of what information was on the plans disclosed to DPS, did DPS review Bozzuto's application for building height compliance? The answer is emphatically "No." The RMX-2 Zone has no set building height standards; height is to be set by the Board. As DPS Director Hubbard has confirmed, DPS must therefore rely on the Board staff to determine height compliance before releasing permits. Counsel for Bozzuto is surely aware of this. It is Bozzuto, not the Committee, that is trying to mislead the Board.

Sincerely yours,



David W. Brown

cc: Charles Loehr, Director  
Michele Rosenfeld, Esq.  
Rose Krasnow, Chief, Development Review  
John A. Carter, Chief, Community-Based Planning  
Barbara A. Sears, Esquire  
Todd D. Brown, Esquire  
Timothy Dugan, Esquire  
Robert G. Brewer, Jr., Esquire

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JUN 28 2005

**MCP-CTRACK**

**From:** Steve Tsang [clarksburgcondo@yahoo.com]

**Sent:** Tuesday, June 28, 2005 8:56 AM

**To:** MCP-Chairman

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Hi, I am a Clarksburg Town Center Resident, and I support the committee and its actions on behalf of the entire Clarksburg Town Center community. The developer has not complied with the stipulations of the Site Plans and its Enforcement Agreement. Please find that there was a violation, and decide on a course of corrective action.

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6/28/2005

## **MCP-Chairman**

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**From:** Arnold Schottland [bigschott@yahoo.com]  
**Sent:** Monday, June 27, 2005 2:01 PM  
**To:** county.council@montgomerycountymd.gov; douglas.duncan@montgomerycountymd.gov; councilmember.knapp@montgomerycountymd.gov; MCP-Chairman; upcounty.citizen@montgomerycountymd.gov; randy.wheeler@montgomerycountymd.gov  
**Subject:** Clarksburg Town Center

My wife and I moved to Clarksburg Town Center after we visited the community and were very impressed with the concept of a "neo-traditional planned community". The "Town Center", the "pocket parks", the bicycle paths, the "pedestrian friendly" streets, the retail center, the "Town Square", all served to make our decision very easy.

We have become, however, very disappointed with the way our community has progressed. Many of the homes are being constructed violating Site Plan guidelines, such as height and setbacks. Also, the plan for the retail area has met with community concerns and has yet to be approved. It is now our understanding that the planned library will be considered as a portion of the retail square footage, thereby taking away significantly from the shops and restaurants. Further, the planned amenities have yet to be completed in a timely fashion. Our understanding was that a timetable had been agreed upon regarding the various planned phases of the development. Yet, while scores of homes have been completed and occupied, we have yet to see the pool, bicycle paths, any retail, etc., completed.

We understand that the developer (Newland) now is requesting approval to amend the project plan. We believe that is only to obfuscate the fact that he is out of compliance with regards to the guideline and regulations. We are requesting you to hold the developer responsible to follow the rules and regulations as stated in the Project Plan. Please do not let them change the rules to suit themselves!

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JUN 27 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

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## **MCP-Chairman**

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**From:** Zutijero@aol.com  
**Sent:** Monday, June 27, 2005 4:52 PM  
**To:** MCP-Chairman  
**Subject:** Clarksburg Town Center - Mont. County

**RECEIVED**  
0990  
JUN 28 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Derick Berlage,

I am homeowner in Clarksburg Town Center and have been disappointed with series of failures by developer/s to maintain standards of design and zoning compliance.

How can Maryland citizenry expect to duplicate or perpetuate the enormously desirable, and INTELLIGENT aspect of a Kentlands- type, 'new town' development when oversight of other developments (mine) are so apparently rife with opportunity for noncompliance by builder/s, developer/s?

Need I say, this does not reflect well on Montgomery County government?

One very small specific:

I am still trying to figure out why our retail neighborhood development was apparently 'awarded'(?), 'designated'(?), 'strong-armed' (?) a Giant brand food store many years ago before any construction began when there is already a Giant brand food store less than 2 miles south along Route 355 in Milestone development.

Well, but of course this eliminates any need for competition in price and product and, as always, hurts the people of Montgomery County.

My personal preference would be for an upscale brand i.e.: Fresh Fields store or Balducci's, however, I cannot beleive that a Safeway, Food Lion, Magruder would not want to be represented.

What sort of arrangements are going are?

There are street setbacks that have not been met, height requirements ignored, inadequate recreation facilities hurriedly installed (example: yes, 2 outdoor swimming pools are included in the development -- but each being not much larger than one would find in someone's backyard).

Promised and budgeted for cutting edge features designed into future community schools have been eliminated or drastically reduced.

Interestingly, my property taxes certainly have not been eliminated or drastically reduced.

The once golden tone of Montgomery County continues to tarnish at the expense of it's public.

thank you -

Z Tijero

Clarksburg Town Center

Clarksburg, MD 20871

Ps additionally, I am FOR preservation of Historic Site - COMSAT building along I270.

SOMEONE, some business or group would love to own and use this building and property.

This requires finding, searching for, perhaps an unusual or nontraditional end-user.

Think outside of the box.

MCP-Chairman

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0991  
JUN 27 2005

**From:** DeCarlo, Cathy [Cathy.DeCarlo@sodexhoUSA.com]

**Sent:** Monday, June 27, 2005 9:07 AM

**To:** MCP-Chairman

**Cc:** timdearros@comcast.net

**Subject:** Clarksburg Town Center Resident Complaint

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Chairman,

I have been on vacation for a week, and before I do anything else, including unpack, I want you to know how I feel about the miserable performance of you and your staff regarding requiring the developer, Newland, to comply with the original project plan for my community, Clarksburg Town Center.

I am very unhappy that I bought a home in Clarksburg, as are many of my neighbors. I will sell my home and move at the earliest possible moment unless something is done at the 7/7 hearing to ensure that this community will be the kind of development I was promised -- by the Newland representatives -- when I purchased my home. Among the items I was promised are:

- A well-designed walking, biking, front porch community with no parking enforced on porch oriented streets.
- A town center with a small-town, Savannah-styled feel which does not allow tall buildings, lots of vehicle traffic or strip mall developers.
- Beautifully landscaped entry areas, sidewalks and other green space, with areas specifically designed for dogs, children's play, biking, walking/jogging and picnics.
- An interest in the historic preservation goals expressed in this community for many years.
- A real response to home-owner concerns, as opposed to resistance and duplicity, sometimes stooping to the level of illegality, where changes to the original project plan are concerned.

I will be at the July 7 hearing to ensure my needs as a home-owner are met and that property values in my community are preserved.

C. J. DeCarlo  
12943 Clarks Crossing Drive  
Clarksburg, MD 20871  
(301) 540-6293

6/27/2005

## **MCP-Chairman**

---

**From:** Carolyn McAllister [carolmca@yahoo.com]  
**Sent:** Sunday, June 26, 2005 8:16 PM  
**To:** MCP-Chairman  
**Subject:** Clarksburg Town Center

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0992  
JUN 27 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Mr. Berlage: I am writing to request your special consideration and attention to the issues listed below. Thanks in advance, Carolyn McAllister

### **WHAT HAS GONE WRONG IN THE CLARKSBURG TOWN CENTER PROJECT?**

**An Unfulfilled Vision - The Clarksburg Town Center Master Plan envisioned a new Town Center whose scale and layout were in keeping with the scale of existing Historic Clarksburg development. Sensitive and sensible architectural scale have been abandoned in favor of oversized homes and bigger profits, even as planned community amenities are being scaled back or disappears altogether.**

**Developer complicity - Developers built in violation of site plan standards with no apparent concern that they would be held to account by the Board. Now the developers have filed Project Plan "Amendments" that, if approved would "paper over" all the violations, by turning them into conforming construction. What possessed them to think that this strategy would actually work?**

**Staff failings - The staff has failed to systematically monitor compliance with the site plan development standards by ensuring that construction meets the prescribed development standards when releasing building permits. Why has the staff been attempting to blame DPS for these failings? Why has work not been brought to a halt on construction known to be out of compliance?**

**Staff integrity - Why would a staff member cover up**



site plan violations by (a) altering official site plan documents after construction to conform to what was built and (b) falsely stating to the Board that the site plans were amended before construction? Why does staff continue to work with Developer behind the scenes to paper-over errors?

Building height - Hundreds of townhouse and multi-family units have been built at heights far in excess of Planning Board-prescribed heights.

Front yard setback - Hundreds of townhouse and multi-family units have been built without the Board-prescribed 10' front yard, i.e., street setback.

Phasing violations- Many community-centered common area projects required to be completed before additional phases of dwelling construction have been allowed to go unfinished as new construction continues apace. Areas key to the Clarksburg Master Plan and the approved Project Plan / Site Plan have been eliminated from the project without Amendment.

MPDU Violations - MPDU deficit for current phasing. Developer reduced MPDUs in high-end condominiums only to plan excess massing of MPDUs in what will become the Town Square/retail area.

What next? - Efforts by ordinary citizens to get to the bottom of the problems have been met with resistance, misdirection and cover-ups at virtually all levels of the staff for months, requiring hundreds of hours of digging and prodding just to learn why things have gotten so out of hand. When problems can no longer be ignored, they are compartmentalized into individual issues where citizens' attempts to obtain relief meet an imposing "burden of proof" requirement before the Board. Will the Board hold the developers accountable for site plan violations? What consequences will they face for their heedless pursuit

of profits? Is the Board willing to look at the problems in Clarksburg on a comprehensive, proactive basis and stop work until all issues are resolved?

Carolyn A. McAllister  
12819 Clarks Crossing Drive  
Clarksburg, MD 20871  
240-235-4175

---

Yahoo! Sports  
Rekindle the Rivalries. Sign up for Fantasy Football  
<http://football.fantasysports.yahoo.com>

**MCP-Chairman**

**From:** Adrienne Elefantis [adrienne.elefantis@comcast.net]  
**Sent:** Monday, June 27, 2005 9:10 AM  
**To:** MCP-Chairman  
**Subject:** Clarksburg Town Center development issues

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0993  
JUN 27 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Chairman Berlage,

I am writing to voice my concerns about apparent developer violations in the Clarksburg Town Center (CTC), and the failure of MNCPP to stem these violations.

As a CTC resident and property owner, I support the original vision of the CTC Master Plan. The Master Plan needs to be upheld not only for legal reasons, but because what is built here directly affects our property values, our quality of life, and ultimately the kind of community that develops in this part of the county. MNCPP approved the Master Plan because it offered a progressive vision and specific benefits. But MNCPP has done nothing to stop the developer from systematically violating both the overall vision and the technical requirements of the Plan. The failure to enforce has been so extensive, it makes us wonder whose interests our county employees are trying to serve.

We as CTC residents now have to live with a legacy of countless developer violations, many of which will never be fixed. On top of that, we have real reason to be concerned that ongoing development of the remaining phases will continue to violate the Plan. This is totally unacceptable. And if nothing is done to address the CTC residents' concerns now, it will become a real PR problem for the MNCPP and the county.

I know you will be considering this issue in upcoming meetings. Although I cannot attend the July 7 hearing, I respectfully urge you to work with the Clarksburg Town Center Advisory Committee and counsel in coming up with a reasonable plan of action. Hopefully, with your help we can make sure CTC becomes the community we were all promised.

Thank you in advance for your attention to these matters.

Sincerely,  
Adrienne Elefantis  
23800 Branchbrier Way  
Clarksburg, MD 20871  
240-305-2919 (tel)

6/27/2005

**MCP-Chairman**

**From:** Mark Lieberman [MarkLieberman@carfax.com]  
**Sent:** Monday, June 27, 2005 7:27 AM  
**To:** MCP-Chairman  
**Subject:** Clarksburg Town Center project / Comsat

**RECEIVED**  
 0994  
 JUN 27 2005

OFFICE OF THE CHAIRMAN  
 THE MARYLAND NATIONAL CAPITAL  
 PARK AND PLANNING COMMISSION

Mr. Derick P. Berlage,

We are sending you this email to voice our concerns regarding the Clarksburg Town Center project. Specifically, our concerns are in regards to the following unresolved issues. I would hope that the Clarksburg Town Center be developed in accordance with what residents were sold on and what developers originally committed to. That is only fair and equitable. We are hopeful that you will address these at the July 7th hearing.

**An Unfulfilled Vision** - The Clarksburg Town Center Master Plan envisioned a new Town Center whose scale and layout were in keeping with the scale of existing Historic Clarksburg development. Sensitive and sensible architectural scale have been abandoned in favor of oversized homes and bigger profits, even as planned community amenities are being scaled back or disappears altogether.

**Developer complicity** - Developers built in violation of site plan standards with no apparent concern that they would be held to account by the Board. Now the developers have filed Project Plan "Amendments" that, if approved would "paper over" all the violations, by turning them into conforming construction.

**Staff failings** - The staff has failed to systematically monitor compliance with the site plan development standards by ensuring that construction meets the prescribed development standards when releasing building permits. Why has the staff been attempting to blame DPS for these failings? Why has work not been brought to a halt on construction known to be out of compliance?

**Staff integrity** - Why would a staff member cover up site plan violations by (a) altering official site plan documents after construction to conform to what was built and (b) falsely stating to the Board that the site plans were amended before construction? Why does staff continue to work with Developer behind the scenes to paper-over errors?

**Building height** - Hundreds of townhouse and multi-family units have been built at heights far in excess of Planning Board-prescribed heights.

**Front yard setback** - Hundreds of townhouse and multi-family units have been built without the Board-prescribed 10' front yard, i.e., street setback.

**Phasing violations**- Many community-centered common area projects required to be completed before additional phases of dwelling construction have been allowed to go unfinished as new construction continues apace. Areas key to the Clarksburg Master Plan and the approved Project Plan / Site Plan have been eliminated from the project without Amendment.

**MPDU Violations** - MPDU deficit for current phasing. Developer reduced MPDUs in high-end condominiums only to plan excess massing of MPDUs in what will become the Town Square/retail area.

Additionally, we support the preservation of the historic COMSAT building and the 33.5 acres

6/27/2005

of open space.

Regards,

Mark & Linda Lieberman

23402 Clarksridge Rd

Clarksburg, MD 20871



**MCP-Chairman**

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

**From:** Paul (and/or Mary) Majewski [pmajewski@att.net]  
**Sent:** Monday, June 27, 2005 7:58 AM  
**To:** MCP-Chairman  
**Cc:** Matthews, Catherine; Scott Reilly; ocmail@montgomerycou; Duncan, Douglas; MC Council;  
Rob\_Garagiola@senate.state.md.us; Kathleen Dumais; Jean Cryor;  
Brian.Feldman@house.state.md.us; ClarksburgCA@yahoo.com  
**Subject:** Please rescind all currently approved housing development plans until infrastructure makes progress

Chairman Berlage and planning board members:

Please see attached and, accordingly, please rescind all currently approved housing development plans until infrastructure makes progress

Paul Majewski  
President  
Clarksburg Civic Association  
P.O. Box 325  
Clarksburg MD 20871  
(H: 301-972-6031 W: 301-975-4069)

cCa  
Clarksburg Civic Association  
Clarksburg, Maryland 20871-0325

Jun 27, 2005

The Honorable Derick Berlage  
Chairman  
The Maryland-National Capital Park and Planning Commission  
8787 Georgia Avenue  
Silver Spring, MD 20910-3760

Chairman Berlage

Members of the Clarksburg Civic Association, its Executive Committee, its Planning Committee, and I request that you strictly control growth of housing in the Clarksburg area until:

- roads are built and maintained to handle existing and anticipated traffic,
- emergency rescue service response approaching six minutes is practically possible to all units at all stages of construction and road maintenance, and
- deviations from the master plan are corrected, compensated for, adjusted for, and measures be taken to prevent any reoccurrence.

Specifically, halt the construction of houses and granting of housing permits. Rescind all currently approved housing development plans. Approve only plans that include strict conditions that can and will be proactively enforced and that force the following:

- sufficient roads, schools, emergency rescue service, and other amenities (such as sidewalks and bike paths) must be scheduled and built prior to the construction activity and residential units that are the major cause for their need;
- construction must be tied to more and sufficient permitting and enforcement;
- Fire and Rescue Service must have veto authority over every aspect of the planning, permitting, and enforcement process.

The above is required now. Residents of Clarksburg risk their lives when they travel these roads. It is risky even to live in houses not readily accessible to emergency response. We spend more time in Clarksburg road delays than in I-270 or beltway delays. Given that the build out of Clarksburg is only just starting, we have a chance to prevent disastrous consequences in the future.

Sincerely yours,

Paul E. Majewski  
President  
Clarksburg Civic Association

cc:  
[mcp-chairman@mncppc-mc.org](mailto:mcp-chairman@mncppc-mc.org)  
Matthews, Catherine <Catherine.Matthews@montgomerycountymd.gov>;  
Scott Reilly <scott.reilly@montgomerycountymd.gov>;  
ocemail@montgomerycou <ocemail@montgomerycountymd.gov>;  
Duncan, Douglas <Douglas.Duncan@montgomerycountymd.gov>;  
MC Council <county.council@montgomerycountymd.gov>;  
Email for Maryland District 15 Delegates and Senator.

## **MCP-Chairman**

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**From:** dpatel@issinet.com  
**Sent:** Monday, June 27, 2005 9:57 AM  
**To:** MCP-Chairman  
**Subject:** WHAT HAS GONE WRONG IN THE CLARKSBURGTOWN CENTER PROJECT?

### **WHAT HAS GONE WRONG IN THE CLARKSBURGTOWN CENTER PROJECT?**

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**R E C E I V E D**  
0997  
JUN 27 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

**Developer complicity -** Developers built in violation of site plan standards with no apparent concern that they would be held to account by the Board. Now the developers have filed Project Plan "Amendments" that, if approved would "paper over" all the violations, by turning them into conforming construction. What possessed them to think that this strategy would actually work?

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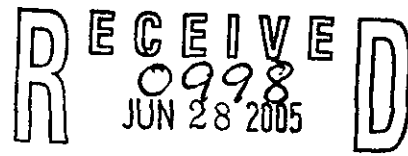
**Front yard setback -** Hundreds of townhouse and multi-family units have been



built without the Board-prescribed 10' front yard, i.e., street setback.

Phasing violations- Many community-centered common area projects required to be completed before additional phases of dwelling construction have been allowed to go unfinished as new construction continues apace. Areas key to the Clarksburg Master Plan and the approved Project Plan / Site Plan have been eliminated from the project without Amendment.

MPDU Violations - MPDU deficit for current phasing. Developer reduced MPDUs in high-end condominiums only to plan excess massing of MPDUs in what will become the Town Square/retail area.



**MCP-Chairman**

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

**From:** Arvin Shroff [arvinshroff@comcast.net]

**Sent:** Tuesday, June 28, 2005 8:10 AM

**To:** MCP-Chairman

**Subject:** Clarksburg Town Center Development -July 7th meeting

Dear Sir: I had previously voiced my opinion regarding the irresponsible manner in which the developer had undertaken the construction of the Clarksburg Town Center development [by not adhering to the approved plan] and the oversight provided my the Montgomery County authorities. Unfortunately I will be out of town on the day you are to hold the meeting. However I want to let you know that I am a Clarksburg Town Center Resident, and I support the committee and its actions on behalf of CTC and the greater Clarksburg community. In my opinion the developer has not complied with the stipulations of the Site Plans and its Enforcement Agreement. Based on the history of violations we expect your committee to find that there was a clear and deliberate violation of the requirements, and decide on an appropriate course of corrective action(s).

Thank you and look forward to your decision.

Arvin & Theresa Shroff  
23417 Clarksridge Road  
Clarksburg, MD 20871

June 17, 2005

Maryland National Capital Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, MD 20910-3760

RECEIVED  
0999  
JUN 28 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

**PLANNING BOARD**

I am writing to urge the Planning Board to approve an amendment to the Clarksburg Master Plan, to designate the COMSAT Labs building for historic preservation.

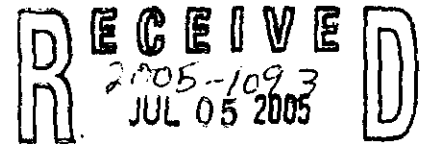
This building has historical significance to Montgomery County in that it was used for historic work on space communications which included early analyses and decisions which led to the United States success in space, many inventions and spinoffs which added to the value of Montgomery County.

The building deserves to be preserved for its contribution to the world space program and its enhancement of Montgomery County and Maryland.

Sincerely,



Terry Rexford  
143 Westway Road T3  
Greenbelt, MD 20770



OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

July 5, 2005

Derick P. Berlage, Chairman  
Montgomery County Planning Board  
Maryland National Capital Park and Planning Commission

Dear Chairman:                      Re: Clarksburg Master Plan: Suggestions

I would like to offer several suggestions which may be of assistance in resolving this issue. They are:

- \* Assignment of Task Force for immediate review and analysis.
- \* Establish orientation for out-of-state developers.
- \* Review accelerated development policy.
- \* Establish web-site posting of site design for public review.
- \* Educate out-of-state developers on stringency of Montgomery code.
- \* Enhance communication between departments.

Thank you very much for your concern on these matters.

Sincerely,

Joan Snow  
25800 Ridge Road  
Damascus, MD 20872  
301-253-4064

#51,2,3

**MCP-Chairman**

**From:** Casey, Jean [JCasey@gazette.net]  
**Sent:** Tuesday, July 05, 2005 11:23 AM  
**To:** MCP-Chairman  
**Subject:** Clarksburg Town Center Hearing

**RECEIVED**  
2005-1092  
JUL 05 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

After reading the reports in the newspapers, there are clearly substantial issues that need to be sorted out. Throughout the process, I would like you to remember that there are families making their homes in the "buildings" you are discussing. Speaking for my 95-year old mother and myself, I hope that you will never consider demolition as a remedy. That would compound an already confusing issue and unnecessarily hurt the people who bought their homes in good faith.

---

Jean A. Casey  
12824 Clarksburg Square Road #404  
Clarksburg, MD 20871

7/5/2005

#s 1,2,3

**MCP-Chairman**

**From:** Mike.Mesa@meridianmt.com  
**Sent:** Tuesday, July 05, 2005 11:16 AM  
**To:** MCP-Chairman  
**Cc:** County.Council@montgomerycountymd.gov  
**Subject:** Planners seek audit after lies uncovered

**RECEIVED**  
2005-1090  
JUL 05 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Chairman

I am writing as a terribly concerned citizen to request , no to demand , answers to the building violations uncovered in Clarksburg. It appears to me that the government person who illegally changed the plans to make it appear that the builders were not in violation had to be doing this at the behest of the builders and most likely did it for money. I have to assume the planning office hires reasonably intelligent folks and that no one would risk prosecution, or loosing their job and career for such a favor if money was not involved in someway.

This incident adds fuel to my long held worst fears and beliefs. It appears that the development community may have bought our County Government. It seems that when they cant get their way through the public route they just buy what they want. Sometimes they do it through campaign financing and sometimes through more direct ways. I urge you to have a complete and comprehensive investigation. One that is 100% open and in the public view. It took a band of concerned and determined citizens to uncover these violations in the first place. Now you should invite these folks into the process as your investigative partners as you hopefully begin to investigate these 100's of violations. Please dont just look at these violations but review the entire Clarksburg project with an eye for other code violations and other illegal activity.

The big questions are :

Has the development community compromised our government?

What will the County do to rectify the code violations that have and will be found?

What steps will be take to assure that the entire process is fair, honest and enforced?

Michael Mesa  
17505 Moore Rd  
Boys, Maryland 20841  
1-301-916-3670

[http://www.gazette.net/200526/weekend/a\\_section/283078-1.html](http://www.gazette.net/200526/weekend/a_section/283078-1.html)

7/5/2005

## MCP-Chairman

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**From:** Ehrlich, Roberta on behalf of MCP-CR  
**Sent:** Tuesday, July 05, 2005 9:15 AM  
**To:** MCP-Chairman  
**Subject:** FW: Resident of Clarksburg Complaint

RECEIVED  
2005-1091  
JUL 05 2005

This one is for you. Roberta

-----Original Message-----

**From:** DeCarlo, Cathy [mailto:Cathy.DeCarlo@sodexhoUSA.com]  
**Sent:** Friday, July 01, 2005 2:03 PM  
**To:** MCP-CR  
**Subject:** Resident of Clarksburg Complaint

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Members of the Planning Board:

I am a resident of Clarksburg Town Center, and I have just learned that my single-family Miller and Smith home is not sufficiently **set back** from the streets, on which I am the corner house, nor is it an appropriate distance from the single family home on my left. Unfortunately for my property value, this problem was recognized with the homes across the street from me, and the difference is immediately visible.

I have also recently been told that the project plan for the street which runs in front of my home, Clarks Crossing Drive, and to the side of my home, Clarksmead, now allows for **parking** on both sides of these streets. Originally there was to be no parking on Clarks Crossing and parking only on one side, the opposite side from my home, on Clarksmead.

Since I am one block from the community pool, there is absolutely no way that I can live with this situation. As it is, any car parked on either street is an eye-sore. (I thought that is why we have 2-car garages and alley ways.)

But, more importantly, the noise of doors slamming and cars starting late into the night is directly under my bedroom windows since the sidewalk is so close to my home. A person on the sidewalk smoking a cigarette sends smoke into my home, and I can hear every word of conversations spoken in a normal speaking voice as they are within a few feet of my windows. The house across Clarksmead, where parking was originally to be allowed, has 30 feet of side yard as a buffer -- I have 4!!

I am very angry, and I feel that I was misled by Newland and my builder, who both assured me that I would not be bothered by unauthorized pool parking and noisy auto traffic around my home. And, I feel that you did not protect my interests by allowing violations of the setback distances for this community that were already generously in favor of the developer and builder.

My home is not far enough in from the street to even allow for reasonable comfort and privacy. I want, first, **reassurance from the Board that you are not going to allow insult to be added to injury by allowing people to park at the front or side of my house.** Second, I believe I am due some **compensation** for the extra sound-proofing, insulation and measures I will need to take to protect my family and my home as a result of the closeness of my exterior walls and windows to the street.

I plan to attend the hearing, and I have contacted an attorney to help represent my interests.

Cathy J. DeCarlo

7/5/2005

12943 Clarks Crossing Drive  
Clarksburg, MD 21093  
301-540-6293  
443-799-4693 cell  
[cathy.decarlo@sodexhousa.com](mailto:cathy.decarlo@sodexhousa.com)



#123  
**MCP-Chairman**

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**From:** s constantine [scon46@hotmail.com]  
**Sent:** Monday, July 04, 2005 2:30 PM  
**To:** MCP-Chairman  
**Subject:** Clarksburg Town Center - Request to consider all alleged violations together

July 4, 2005

RECEIVED  
2005-1089  
JUL 05 2005

Dear Chairman Berlage,

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

For many years, I had expressed my gratitude for the way in which planning officials had worked in good-faith with our communities to preserve our quality of life in Montgomery County. As the Co-President of Maplewood Citizens' Association, I always looked to the Planners for their expertise on development projects. During my tenure as Co-President of Maplewood, our community successfully worked with HOC on the Pooks Hill Apartments expansion project and on the FASEB expansion. However, for the last few years, I have expressed my concern to Planning officials that community members are now being excluded from the Planning process by planning officials and by changes in County zoning laws.

Therefore, I was quite troubled to learn last week about a Planning Board report that contained very serious issues concerning lack of County oversight of the development review process with regard to the new Clarksburg Town Center Community and indicated that approved site plans for the new community may have been altered by Park and Planning officials. Before learning of the development problems, my family and I had visited the new Clarksburg Town Center community. Entering the community, we immediately sensed that the community was not up to the high quality of development standards for Montgomery County. My husband commented that the houses seemed "too close to the road," the new townhouses seemed too high, there seemed to be a lack of promised amenities for the growing community and the small country road leading into and out of the community appeared unsafe for the growing community. This just did not seem to be the type of well planned project usually approved by our planning officials. Now we know that the new residents of the growing Clarksburg community share our concerns and have asked the Planning Board and the Montgomery County Council to investigate the problems.

The integrity of the planning process is now in question. I respectfully request that the Planning Board show good faith with the Clarksburg community by considering all of the violations alleged by the community before deciding on what sanctions to impose against those who may be in violation. This would be a good first step toward preservation of the integrity of the planning process.

Finally, I support recommendations for a full review of how the county oversees development, and I respectfully request that community members and community associations be included in this review process. This would be a

good first step in restoring public faith in the planning process.

Sincerely,

Sharon Constantine

Cc: Tom Perez, President Montgomery County Council

# 1,2,3

**MCP-Chairman**

**From:** Isaac Hantman [hantmanzak@comcast.net]  
**Sent:** Sunday, July 03, 2005 10:01 AM  
**To:** MCP-Chairman  
**Cc:** Mc1\_Duncan; mcc5--Perez  
**Subject:** OUtageous negligence at the Planning Board

**RECEIVED**  
2005-1088  
JUL 05 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Sir,

The news accounts of negligence or worse with regard to the siteplans for a Clarksburg subdivision by employees of the Montgomery County Planning Board are extremely troubling. I urge you to launch a complete, honest investigation and to punish all wrong doers be they employees of the County the planning board or the developer firm(s) involved.

cc: Montgomery County Council President Perez  
cc: Montgomery County Executive Duncan

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No virus found in this outgoing message.  
Checked by AVG Anti-Virus.  
Version: 7.0.323 / Virus Database: 267.8.8/36 - Release Date: 7/1/2005

#1,2,3

**MCP-Chairman****RECEIVED**  
2005-1087  
JUL 05 2005**From:** Lejmitz@aol.com**Sent:** Monday, July 04, 2005 1:40 AM**To:** MCP-Chairman**Subject:** Clarksburg IssuesOFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Montgomery County Planning Board Chairman Derick Berlage:

I write to you regarding two issues before you in the Clarksburg area: 1) The designation of COMSAT as a historical landmark; and 2) Zoning violations re height limitations.

I urge you to designate COMSAT as a historical landmark, and to preserve the building for future generations. Ever since I moved to the area in 1986, I have marveled at the futuristic architecture of COMSAT, which seemed to epitomize the "Jetsons"-type optimism of space and technology. While those futuristic areas are now commonplace, we must work to preserve the remembrance of the scientific pioneers that made them possible. I grew up without cell phones, weather satellites, e-mail, or the Internet. These advances have changed how we live and do business, and have united the globe. I recall this each time I pass COMSAT's headquarters, whether to visit relatives in distant states or to visit nearby friends or Civil War battlefields. COMSAT is as much a part of our history as Gettysburg, and deserves equal treatment. Future generations must realize what life was like before the Internet and cell phone, just as they must know how the Union was preserved. Please, be a leader of history, act to preserve this monument to technology and globalization. Designate it the Duncan Living Museum of Technological Advancement, or some such. Incorporate the many technologies we now take for granted, from Satellite TV to Monitoring Global Warming to ??? I challenge Montgomery County to take its rightful place in history.

I also write to urge you to act expeditiously to correct the alleged egregious violations of height restrictions in Clarksburg developments. I understand the over 500 units have surpassed the County height restrictions, and that County staff have acted to conceal these violations. Violations of height restrictions, to me, involve not just unlawful increases in density; they involve continuing violations to the right of all Clarksburg and County residents to their rightful vistas. It is as if the Washington Monument height restriction was violated, and DC residents must perpetually view an eyesore that rises above that monument. Such a violation, and one repeated many times, cannot really be remediated. It is not realistic to believe the County will order the units to decrease their heights. Assuming that such remediation is not possible, I suggest two sanctions: 1) reduction in the number of housing units by the equivalent density exceeding the height restriction; and 2) increase the school and park sites set aside by the developer to equal the reduction in density. The community and County as a whole were harmed in perpetuity by these reckless, perhaps intentional, violations in height, and these groups should be made whole. As you know, the County needs more park and school land. Finally, if such violations are found in other developments, the developers should be penalized by having to set aside equivalent amounts of park and school land, even if it must repurchase existing housing units. The community nearest the home sites must be made whole.

Thank you for addressing my concerns and suggestions. Lilo Mitz, Potomac

7/5/2005

**MCP-Chairman**

---

**From:** Duquesnoy, Catherine (LNG-HBE) [catherine.duquesnoy@lexisnexis.com]

**Sent:** Friday, July 01, 2005 3:30 PM

**To:** MCP-Chairman

**Subject:** Clarksburg Town Center

Please find attached a letter regarding the issues involving Clarksburg Town Center

Thank you.

RECEIVED  
1036  
JUL 01 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

July 1, 2005

The Honorable Derick Berlage  
The Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Dear Mr. Berlage and Members of the Planning Board,

Please accept my sincerest gratitude for the time you have spent investigating the pending issues regarding the development of Clarksburg Town Center. For some time now, the CTAC has worked to bring to the attention of the Board many of the concerns of the Town Center residents. What started as a discussion involving the features of the future retail center area has led to the discovery of numerous irregularities in the development of the entire Town Center. While I do have serious concerns regarding the retail center and the proposed elimination of retail space in favor of residential units, I am primarily writing today with respect to the investigations regarding height and setback issues.

My husband and I have several investment properties in Clarksburg. In addition, we currently live in Town Center. We are quite concerned that the approved Master Plan for Town Center has not been adhered to in various respects. We, as well as many others, purchased property in the Town Center based on certain representations as to the unique combination of planned residential and retail amenities. We would like assurance from the Board that whatever changes have been made in violation of the original Master Plan will be remedied immediately.

One of our investment properties is a condominium townhouse that is currently under contract for construction by Craftstar Homes on Catawba Hill Drive. Last August, in anticipation of the release of the Craftstar condominium townhouses, my husband and I spent the night in our car outside the Craftstar Sales Office in order to be among the first in line to purchase. We purchased a condominium townhouse in good faith with the expectation that the home we contracted for would be built.

We have recently been informed by the builder that the entire row of sixteen homes on Catawba Hill Drive (including ours) may not be built due to height/setback restrictions. Obviously, had we been aware of the possibility that the homes would not be built, we would have purchased elsewhere. As you are doubtless aware, the price of similar homes has increased significantly in the meantime and we, as well as others, are unable to purchase the same type of home for the same price anywhere in the community. In addition, the location of the home was critical in the decision to purchase as it overlooks a future park and is next to the pool and Resident's Club.

Craftstar has offered us the option of cancelling our contract and returning our deposit in full. We, as well as others, have made our plans in anticipation of the construction of the home as promised and the return of our deposit at this point in time would not adequately compensate us for the lost opportunity. We place our trust in the Board to ensure that we will either have the home that we were promised or that we are adequately compensated for any loss incurred. In the event that the home cannot be built and that we are not adequately compensated for our loss, we plan to pursue any legal claims and remedies that we may have against all parties that were involved in creating this situation.

We respectfully ask that you to make a final determination with respect to the height, setback, and other development issues as quickly as possible. We fully expect that any fines imposed for violations will be directed back to the Town Center in the event that it is not possible to alter existing construction in a manner that would comply with the Master Plan. We place every confidence in the Board to verify that all future development in the Town Center will be undertaken in compliance with the Clarksburg Master Plan as it was originally envisioned.

Catherine A. Duquesnoy, J.D., M.B.A.

**MCP-Chairman**

**From:** JeKeen@aol.com  
**Sent:** Friday, July 01, 2005 12:17 PM  
**To:** MCP-Chairman  
**Subject:** Re: letter draft.

RECEIVED  
1037  
JUL 01 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

To the Chairman,

I have been a resident of the Clarksburg Town Center for over two years, and I support the committee and its actions on behalf of my hometown that is located at the CTC and the greater Clarksburg community. I chose this place with a vision that was provided in sales brochures for a style, feel and way of life. I haven't seen anything come to fruition, except my amenities being pushed back while residential construction continues in full swing.

I am more than concerned with the changes to the plans and restrictions that were incorporated when the CTC was developed a decade or so ago. I am very concerned that my county officials are running an operation with no internal controls that adversely affects my hometown by allowing the developers to build what they want to drive higher profits for themselves and disregard the community residents. I would like to know what the policies, procedures, internal control systems, and personnel training standards that are in place on the planning board. As I understand it, it's a position of public trust and responsibility to protect the public. I am also VERY interested to know what kind of management oversight and reporting requirements the board is employing to ensure this trust is fulfilled. Quite frankly, I am extremely disappointed in current situation and would like to know who is accountable and what the price of the accountability is. This is where I live and make my home. This is not a six month rental for my family and I. We live here, we made friends here, are proud to be part of the Clarksburg Community. I am not proud of my county Government.

The developer has not complied with the stipulations of the Site Plans and its Enforcement Agreement. Please find that there was a violation, and decide on a course of corrective action that channels the profits from these ill-gotten gains back to the community and assess the developers the responsibility to fully pay for the expenses that the residents incurred to defend ourselves against their actions.

Thank you for your attention to this matter and I am anxiously awaiting to see what actions come from the hearing,

Jeff Keen

**MCP-Chairman**

**From:** Hkirchman@cs.com  
**Sent:** Friday, July 01, 2005 1:00 PM  
**To:** MCP-Chairman  
**Cc:** nbpdip@comcast.net; bkeller@battley.com  
**Subject:** Clarksburg

**RECEIVED**  
 1039  
 JUL 01 2005

OFFICE OF THE CHAIRMAN  
 THE MARYLAND NATIONAL CAPITAL  
 PARK AND PLANNING COMMISSION

Dear Mr. Berlage:

I have lived in Clarksburg, Maryland for the past 5 years, and Montgomery County, Maryland for over 40 years. After speaking with, or corresponding with the many county agencies regarding the zoning violations, lack of stepping infrastructure as called for in the Master Plan and the inordinate number of finger pointers, I found myself directed to you.

I have letters from citizens dated back to July of 2002, questioning you directly regarding the lack of trigger mechanisms for road development, complaints over the past year regarding Park & Planning's alleged misconduct with forging approved plans to cover up violations, and numerous other activities which have destroyed the lifestyle of some of the citizens in the Clarksburg area.

Clarksburg is quite a dangerous place to live these days, with lack of appropriate roadways, lack of maintained roadways (due to poorly written contracts on MNCPP part), lack of proper fire and rescue services, lack of proper police monitoring, much less any social services offering for the increasing population. It is beyond my comprehension how something like this could occur and continue to occur with no reaction from the County agencies other than to point at your office and you directly. Almost all of the agencies I have dealt with have stated that you entered into these contracts without the proper stipulations for time and or penalties to the developers and that they lack any enforcement triggers for the roadways.

In Wheaton there was a revitalization so therefore the supporting infrastructure existed. In the Kentlands the supporting roadway network existed prior to the development, as in King Farm. This planned community is a disaster. Many County employees are just a fed up with the complaints and have no where to send the citizens in an attempt to alleviate our concerns and produce some type of corrective action. I can quote one as stating that "they have created a monster in Clarksburg". I have heard many employees of 20 years plus state that there was no reason for the development to occur in the order in which it did without supporting infrastructure prior to the development. There is no excuse for the lack of enforcement of the code violations, and building regulations either.

These height violations were pointed out to your agency over a year ago, and yet your employees continued to cover up the mistakes and the developers were continuing to build over the restrictions and sell their properties for even more of a profit, as Montgomery County receives the impact fees for every unit yet provides no supporting infrastructure.

There is no excuse for this type of apparent corruption within your offices, and I do believe that the State Prosecutor should become involved in an investigation into MNCPP activities.

Sincerely,  
 Hillary Kirchman

7/1/2005



**MCP-Chairman**

**From:** Joel Richardson [jersub13@yahoo.com]

**Sent:** Friday, July 01, 2005 2:16 PM

**To:** MCP-Chairman

**RECEIVED**  
1040  
JUL 01 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Mr. Berlage;

I write to you as a resident of Clarksburg Town Center (CTC). Over two years ago, my wife and I bought a townhome in CTC. We were excited to have the opportunity to join in the community at an early stage and watch it develop and grow around us. My interest in the community was so great that one year after moving here I was elected as our Home Owner's Association's first homeowner representative. While it has been an honor to serve the community, I cannot express my disappointment at how much we were let down by the Newland Communities and the M-NCPPC staff.

I live in a townhouse at the bottom of the hill on which the largest condominium buildings are built. As they were being constructed it became clear that they were grossly out of proportion with the entire community. To make matters worse, while residential buildings that bring revenue to the developer were quickly completed, construction of community amenities has been delayed inordinately. Indeed, while we were promised a pool and community center nearly a year ago, neither has been completed to date.

To make matters worse, we have now learned that a member of Parks and Planning staff was involved in fraudulent activity, in what appears to be an attempt to cover up for the developer's numerous violations. These violations have not yet been addressed, the fraud has not received significant attention -- and I fear its depths have not been fully explored-- yet the developer is already trying to push through amendments to bring the building violating height restriction to within allowances.

Certain minimum steps must be taken before any such amendment can be allowed:

- 1) Each of the developer's violations must be recorded and categorized;
- 2) The full scope of the fraudulent alteration of official documents must be investigated, including:
  - a) Any involvement by Newland Communities or their legal counsel in perpetrating, instigating or encouraging the fraud;
  - b) Any knowledge of Newland Communities or their legal counsel of the fraud either prior to or following its commission; and
  - c) Any payment, promises, or consideration of any kind offered by Newland Communities or their legal counsel offered to staff in consideration of the commission of the fraud; and
- 3) Determination and enforcement of just compensation for the harm to the CTC and Clarksburg communities to be paid by Newland Communities and/or their legal counsel (should their involvement in the fraud be established).

I also note that in the summary of their proposed amendment, Newland Communities refers to their

7/1/2005

attempt to amend the height restrictions as an amendment to clarify the guidelines. I suppose given the fraud that has taken place, this callous cynicism should not surprise me. It does offend me, however, that they have attempted to characterize this significant amendment as a "clarification." I recommend Newland be required to reissue all of their disclosure packets correcting this mischaracterization and clearly indicating the true purpose of the amendment.

In addition to these necessary steps for determination and remedy of the developer's violations, I strongly encourage your office to request a complete investigation by the Maryland Attorney General's office to determine if any criminal activity has taken place.

I appreciate your consideration of my thoughts. As a final matter, as a resident of CTC and the sole homeowner representative on the CTC HOA, I request the opportunity to be heard at the hearing regarding these matters to be held on Thursday, July 7.

Sincerely,

Joel E. Richardson

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<http://mail.yahoo.com>

## **MCP-Chairman**

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**From:** Damon Steele [damonsteele@comcast.net]  
**Sent:** Friday, July 01, 2005 12:05 PM  
**To:** MCP-Chairman  
**Subject:** CTC

**RECEIVED**  
1041  
JUL 01 2005

As a Clarksburg Town Center Resident, I support the committee and its actions on behalf of CTC and the greater Clarksburg community. The developer has not complied with the stipulations of the Site Plans and its Enforcement Agreement. I urge you to find that there was a violation, and decide on an appropriate course of corrective action.

Regards,  
Damon and Erica Steele  
12837 Murphy Grove Terr  
Clarksburg, MD 20871

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

## MCP-Chairman

**From:** Paul (and/or Mary) Majewski [pmajewski@att.net]  
**Sent:** Friday, July 01, 2005 9:39 AM  
**To:** MCP-Chairman  
**Cc:** baines@erols.com; shileykim@aol.com  
**Subject:** Clarksburg Town Center violations

RECEIVED  
1042  
JUL 01 2005

Chairman Berlage:

I support the height and setback violations against the developers. The fines should be high enough to get the attention of every developer in the nation, because you don't know which developer will begin to develop in Clarksburg. All developers should be reminded (in the only way that matters to them) that they need to pay attention to the regulations that they sign off on. They have clearly violated the regulations. Before you take pity on them, remember that they stood to benefit from the violations, to benefit by not investigating (or possibly even covering up) the matter in 2004 when the issue was raised, and to benefit by getting people into the over-tall buildings. This last benefit is a triple benefit because, in addition to the direct money gained, those tall building dwellers may support an amendment to the site plan that will gloss over the 35 and 45 ft maximums and the setback limitations, and they may be writing to you in support of the developers in the violations hearing at hand.

Recently, I have noticed just how much of an impact the tallest (53' or so) of the buildings has on the view. It can be viewed from Stringtown Road near MD 355, from the intersections at Clarksburg Square Road and the next road. It can be viewed from the area at the intersection of Piedmont and Clarksburg Road, about a mile from Stringtown. It does not resemble a house, it is massive in size compared to what one would expect in a town setting. It can be seen rising above the surrounding townhouses.

At the April 14 Consideration Hearing, remember that I testified to the following, which I again testify to:

I agree with the CTCAC argument and support their position on the height violations.

The Clarksburg community has continued to work for lowered heights in the town center. The CCA asked for a three story limit at one point (1992?), and later asked for a three or four story limit (1993?). In talking with Joann Woodson, CCA Historic Committee Chair, we remember a discussion of how many stories were counted if the structure was built on a slope; we seem to remember the discussion was about three or four stories and not about a structure that could seem to have five stories if viewed from the back. In communicating with three of the members (Dick Strombotne, Norm Mease, and Joann Woodson) of the Clarksburg Advisory Committee to the Master Plan, the community was thinking in terms of normal-sized stories.

The CCA unanimously supports the adherence to the maximum height in feet.

The building of such high buildings does do a public harm on damaging the views of the sky and surrounding terrain. Preserving views in the Town Center is mentioned in the Master Plan. The builders could have achieved an award with a correct sized building rather than with an oversized one.

I reside at 12233 Piedmont Road in Clarksburg and am the President of the Clarksburg Civic Association. Kathie Hulley is authorized to present the CCA's position. Ms. Shiley, Mrs. Pressley, Mr. DeArros, and other CTCAC members are CCA members, who have updated us and consulted with us on their actions and who are working with us in our efforts to uphold the Master Plan, the small town atmosphere of the town center, the views, and the setting of the historic district. Kim Shiley is active in our CCA Planning Committee.

Paul Majewski (H: 301-972-6031 W: 301-975-4069)

**MCP-Chairman**

**From:** Sarah Long [slong@charltonresearch.com]  
**Sent:** Friday, July 01, 2005 9:37 AM  
**To:** MCP-Chairman  
**Subject:** Clarksburg Town Center

RECEIVED  
1043  
JUL 01 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Mr. Berlage,

I wanted to take the time to let you know that I do not believe the Clarksburg Town Center Advisory Committee represents the views of many Clarksburg residents. The group was initially created to represent homeowners who were dissatisfied with the early retail center plans, and they did an excellent job of advocating for a better plan and working with the developer on a new plan. The developer, in turn, worked diligently with the group to create a much improved plan that many of us feel fits the concept set forth in the master plan. The CTCAC has since atrophied to a small number of members who continue to carry a grudge, having vilified the developer as greedy and unconscionable. I feel they are on a mission to find fault anywhere they can, and I no longer believe this group represents the interests of Clarksburg residents.

Thank you,

--

Sarah Long  
Clarksburg, MD

----- Forwarded Message

**From:** "Tim DeArros" <timdearros@comcast.net>  
**Date:** Mon, 27 Jun 2005 22:20:12 -0400  
**Subject:** Town Center - additional info

**Hello Town Center Neighbors,**

This is a continuation of the previous email about the July 7th planning commission hearings. *(If you didn't get it please let me know)*

The 1st attachment in the zip-file is a fax copy of a rebuttal letter from CTCAC Counsel to Chairman Berlage.

The 2nd attachment is the history of activities of the CTCAC, which was included and mentioned as an exhibit in the letter. *(It's a 32 page document)*

The letter from Knopf & Brown is 10 pages – but these sections are noteworthy for your review:

- a. Building Height Claims
- b. Setback Claims
- c. Committee Standing

**This is the Action Item:**

Don't forget to voice your opinion via a letter or email to the chairman before July 1st.

Simply email the Honorable Derick Berlage at [mcp-chairman@mncppc-mc.org](mailto:mcp-chairman@mncppc-mc.org) <<mailto:mcp-chairman@mncppc-mc.org>> something like this, in your own words:

7/1/2005

I am a Clarksburg Town Center Resident, and I support the committee and its actions on behalf of CTC and the greater Clarksburg community. The developer has not complied with the stipulations of the Site Plans and its Enforcement Agreement. Please find that there was a violation, and decide on a course of corrective action. (Many thanks to those who already sent an email.).

## Two items of note:

- I erred in yesterday's email, referring to the designer of the Comsat Building as having done the Dulles Airport, but it really was the National Airport.

- Lastly, for anyone who specifically requests a copy, the CTCAC can provide you with a CD containing:

- o 1994 Clarksburg Town Center Original Project Plan
- o 1995 Approved Project Plan Staff Opinion
- o 2005 Letter from Linowes & Blocher requesting 7 Amendment Changes
- o 2005 Amendment Plan Application as Submitted
- o 2005 Substitute Text Pages
- o 2005 Substitute Project Plan Drawings
- o

These documents are public record on file for your review at M-NCPPC. To save you the trouble of trudging down to make your own copies, they were scanned to CD and we can provide to those who are interested in seeing how Clarksburg's Town Center Plan came to be, through the excellent work of the residents who've been here before we even knew about the CTC.

It's when you read the 2005 Amendment Submissions that you'll get really steamed by changes they want to make in our community. (But that's a topic for another email. ☺)

Regards,

The CTCAC

----- Forwarded Message

**From:** "Tim DeArros" <timdearros@comcast.net>  
**Date:** Sun, 26 Jun 2005 08:38:50 -0400  
**Subject:** Public Hearing July 7th

## Clarksburg Town Center residents, neighbors and homeowners:

Today you likely received a set of letters from Montgomery County Department of Park & Planning announcing the Thursday July 7th 2005 Public Hearing about our community.

The planning commission wants to hear from everyone regarding the enforcement of the site plans in the Town Center. After hearing public comment, the commission will discuss the issues, vote, and decide a course of corrective action.

Attached for your review is a letter from the CTCAC Counsel (Knopf & Brown) that was submitted as part of the public record relative to these issues, and we'd like to ask you to send your own email and/or letter to the planning commission BEFORE July the 1st. Below are some summary points.

The best thing you can do as a CTC resident is send a short paragraph or two to Chairman Derick Berlage. His email address is here:

Mr. Derick P. Berlage, Chairman  
Montgomery County Planning Board  
8787 Georgia Ave., Silver Spring MD 20910-3760  
Phone: 301-495-4605  
Fax: 301-495-1320  
Email - mcp-chairman@mncppc-mc.org <mailto:mcp-chairman@mncppc-mc.org>

*"... The First Amendment also ensures every citizen's rights to question public policy.."*

Also scheduled on the same day is the Preservation of the historic COMSAT building, and 33.5 acres of open space. If you would like to be heard – please voice your opinion in favor of preserving the historic building. It was designed by Cesar Pelli, who also designed the Dulles Airport. See the article from today's Washington Post.

Thanks!  
CTCAC  
Amy, Kim, Carol, Lynn, Niren, Tim

## WHAT HAS GONE WRONG IN THE CLARKSBURG TOWN CENTER PROJECT?

**An Unfulfilled Vision** — The Clarksburg Town Center Master Plan envisioned a new Town Center whose scale and layout were in keeping with the scale of existing Historic Clarksburg development. Sensitive and sensible architectural scale have been abandoned in favor of oversized homes and bigger profits, even as planned community amenities are being scaled back or disappears altogether.

**Developer complicity** — Developers built in violation of site plan standards with no apparent concern that they would be held to account by the Board. Now the developers have filed Project Plan "Amendments" that, if approved would "paper over" all the violations, by turning them into conforming construction. What possessed them to think that this strategy would actually work?

**Staff failings** — The staff has failed to systematically monitor compliance with the site plan development standards by ensuring that construction meets the prescribed development standards when releasing building permits. Why has the staff been attempting to blame DPS for these failings? Why has work not been brought to a halt on construction known to be out of compliance?

**Staff integrity** — Why would a staff member cover up site plan violations by (a) altering official site plan documents after construction to conform to what was built and (b) falsely stating to the Board that the site plans were amended before construction? Why does staff continue to work with Developer behind the scenes to paper-over errors?

**Building height** — Hundreds of townhouse and multi-family units have been built at heights far in excess of Planning Board-prescribed heights.

**Front yard setback** — Hundreds of townhouse and multi-family units have been built without the Board-prescribed 10' front yard, i.e., street setback.

**Phasing violations**— Many community-centered common area projects required to be completed before additional phases of dwelling construction have been allowed to go unfinished as new construction continues apace. Areas key to the Clarksburg Master Plan and the approved Project Plan / Site Plan have been eliminated from the project without Amendment.

**MPDU Violations** — MPDU deficit for current phasing. Developer reduced MPDUs in high-end condominiums only to plan excess massing of MPDUs in what will become the Town Square/retail area.

**What next?** — Efforts by ordinary citizens to get to the bottom of the problems have been met with resistance, misdirection and cover-ups at virtually all levels of the staff for months, requiring hundreds of hours of digging and prodding just to learn why things have gotten so out of hand. When problems can no longer be ignored, they are compartmentalized into individual issues where citizens' attempts to obtain relief meet an imposing "burden of proof" requirement before the Board. Will the Board hold the developers accountable for site plan violations? What consequences will they face for their heedless pursuit of profits? Is the Board willing to look at the problems in Clarksburg on a comprehensive, proactive basis and stop work until all issues are resolved? Answers will begin to emerge at the hearing on July 7th.



RECEIVED  
1046  
JUN 29 2005

Honorable Derick Berlage  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, MD 20910

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

June 26, 2005

Re : Clarksburg Town Center

Dear Mr. Berlage and Members of the Planning Board:

I've been living & working in Montgomery County for almost 4 yrs and paying quite a good amount of taxes to Montgomery County & State of MD. Please see my attached W2 for past 4 yrs. Finally I decided to buy a house in Clarksburg Town Center in late 2004 and signed a contract with Craftstar Homes (for 23904 A Catawba Hill Drive - 025L in Clarksburg, MD) in their condominium building #3. Construction of building 1 & 2 went fine and I was excited to see all the progress.

All of a sudden I received a letter from the Seller (Craftstar Homes) that Montgomery County Planning Board has opined to Seller proposed height of the building in which my property was to be built, exceeds max. permissible height in that area and construction cannot continue. This news just shocked me. Howcome, once the architectural plan is approved by DPS (County Permitting Authority), all legal formalities are fulfilled by Seller / Developer and approved by the relevant authorities of the County and construction goes underway, a few of the buildings are completed, people move in those properties, all of a sudden the remaining construction is stopped in middle of nowhere.

Sir, I am very upset with this state of affairs as it affects my plans, my life and my peace of mind. Since the Montgomery county itself approved all these construction plans, how can they stop / cancel it with just a strike of a pen when more than half of the construction in that area has completed and people have already started living in those properties.

I would very humbly request you to please allow the builders to carry on with their construction, keeping in view the fact that

1. Montgomery County itself approved for the construction plan
2. More than half of the buildings have already been built on same plan basis which the County approved itself and now thinks its not right.
3. People have already purchased these properties and are looking forward to use them and all this happened due to approval of the Montgomery County. If these were not approved in first place, no one would have been affected. So if Montgomery County approved it, it should stand by its approval so that lives of people are not affected.
3. High tax paying people like me have a lot at stake due to such decision where County approves something and then disapproves it.
4. May be the County Board doesn't approve any more constructions, but the ones it has already approved and construction plans are underway, and people have already moved and living in similar constructions in same area and those buildings are also built on same

1 Wages, tips, other compensation: 34704.88		2 Federal income tax withheld: 5200.20	
3 Social security wages: 35654.79		4 Social security tax withheld: 2210.60	
5 Medicare wages and tips: 35654.79		6 Medicare tax withheld: 516.99	
a Control number: 7989		Employer use only	
b Employer's FED ID number: 52-1106564		d Employee's SSA number: [REDACTED]	
c Employer's name, address, and ZIP code: Hughes Network Systems 11717 EXPLORATION LANE GERMANTOWN MD 20876			
7 Social security tips		8 Allocated tips	
9 Advance EIC payment		10 Dependent care benefits	
11 Nonqualified plans		12a See instructions for box 12: D 949.91	
13 Statutory employee Retirement plan Third-Party Sick pay: X		12b	
14 Other		12c	
		12d	
e Employee's first name and initial: Last name: Mohammad Anwar 18347 Lost Knife Cir #104 Montgomery Village MD 20886			
f Employee's address and ZIP code: 15 State: MD Employer's state ID: 0025341783			
16 State wages, tips, etc.: 34704.88		18 Local wages, tips, etc.	
17 State income tax: 2338.21		19 Local income tax	
		20 Locality name	
Form OMB. No. 1545-0006 <b>W-2 Wage and Tax Statement 2001</b> Employee's records			

1 Wages, tips, other compensation: 61378.21		2 Federal income tax withheld: 5199.30	
3 Social security wages: 63974.05		4 Social security tax withheld: 3966.39	
5 Medicare wages and tips: 63974.05		6 Medicare tax withheld: 927.62	
a Control number: 00017989		Employer use only	
b Employer's FED ID number: 52-2358833		d Employee's SSA number: [REDACTED]	
c Employer's name, address, and ZIP code: Hughes Network Systems Inc 11717 Exploration Lane Germantown MD 20876			
7 Social security tips		8 Allocated tips	
9 Advance EIC payment		10 Dependent care benefits	
11 Nonqualified plans		12a See instructions for box 12: D 2595.84	
13 Statutory employee Retirement plan Third-Party Sick pay: X		12b	
14 Other		12c	
		12d	
e Employee's first name and initial: Last name: Mohammad Anwar 12506 Great Park Cir #102 Germantown MD 20876			
f Employee's address and ZIP code: 15 State: MD Employer's state ID: 0015300019			
16 State wages, tips, etc.: 61378.21		18 Local wages, tips, etc.	
17 State income tax: 3962.70		19 Local income tax	
		20 Locality name	
Form OMB. No. 1545-0006 <b>W-2 Wage and Tax Statement 2003</b> Copy C for Employee's records			

1 Wages, tips, other compensation: 60994.36		2 Federal income tax withheld: 5373.00	
3 Social security wages: 63569.83		4 Social security tax withheld: 3941.33	
5 Medicare wages and tips: 63569.83		6 Medicare tax withheld: 921.76	
a Control number: 00017989		Employer use only	
b Employer's FED ID number: 52-2358833		d Employee's SSA number: [REDACTED]	
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7 Social security tips		8 Allocated tips	
9 Advance EIC payment		10 Dependent care benefits	
11 Nonqualified plans		12a See instructions for box 12: D 2575.47	
13 Statutory employee Retirement plan Third-Party Sick pay: X		12b	
14 Other		12c	
		12d	
e Employee's first name and initial: Last name: Mohammad Anwar 12456 Great Park Cir #101 Germantown MD 20876			
f Employee's address and ZIP code: 15 State: MD Employer's state ID: 0015300019			
16 State wages, tips, etc.: 60994.36		18 Local wages, tips, etc.	
17 State income tax: 3940.82		19 Local income tax	
		20 Locality name	
Form OMB. No. 1545-0006 <b>W-2 Wage and Tax Statement 2002</b> Employee's records			

1 Wages, tips, other compensation: 71370.88		2 Federal income tax withheld: 7288.30	
3 Social security wages: 74061.53		4 Social security tax withheld: 4591.81	
5 Medicare wages and tips: 74061.53		6 Medicare tax withheld: 1073.89	
a Control number: 00017989		Employer use only	
b Employer's FED ID number: 52-2358833		d Employee's SSA number: [REDACTED]	
c Employer's name, address, and ZIP code: Hughes Network Systems Inc 11717 Exploration Lane Germantown MD 20876			
7 Social security tips		8 Allocated tips	
9 Advance EIC payment		10 Dependent care benefits	
11 Nonqualified plans		12a See instructions for box 12: D 2690.65	
13 Statutory employee Retirement plan Third-Party Sick pay: X		12b	
14 Other		12c	
		12d	
e Employee's first name and initial: Last name: Mohammad Anwar 18045 Cottage Garden Dr #101 Germantown MD 20874			
f Employee's address and ZIP code: 15 State: MD Employer's state ID: 0015300019			
16 State wages, tips, etc.: 71370.88		18 Local wages, tips, etc.	
17 State income tax: 4935.02		19 Local income tax	
		20 Locality name	
Form OMB. No. 1545-0006 <b>W-2 Wage and Tax Statement 2004</b> Employee's records			

1 Wages, tips, other compensation: 34704.88		2 Federal income tax withheld: 5200.20	
3 Social security wages: 35654.79		4 Social security tax withheld: 2210.60	
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17 State income tax 4935.02		20 Locality name	
Form OMB. No. 1545-0006 <b>W-2 Wage and Tax Statement 2004</b> Employee's records			

1, 2, 3  
and 13

**MCP-Chairman**

---

**From:** Granmobley@aol.com  
**Sent:** Tuesday, July 05, 2005 10:51 PM  
**To:** MCP-Chairman  
**Subject:** Clarksburg Hearing

Dear Mr. Berlage:

I am writing about the 591 new homes in the Clarksburg Town Center that have violated height limits or setback requirements. It is important that the Planning Board impose sanctions on the builder who violated the site plan agreement.

The COMSAT Laboratories Building should be designated as an historic site. This is a vital part of the Clarksburg community.

I am not a resident of the Clarksburg area, but as a resident of Montgomery County for more than 50 years, I would like to be able to trust the Planning Board and other officials to look out for the concerns of its citizens. It is your duty to uphold the Master Plans that have been approved.

Very truly yours,  
Claire Mobley

5909 Rudyard Drive  
Bethesda, MD 20814

301-530-0081

1, 2, 3  
and 13

**MCP-Chairman**

---

**From:** Granmobley@aol.com  
**Sent:** Tuesday, July 05, 2005 10:51 PM  
**To:** MCP-Chairman  
**Subject:** Clarksburg Hearing

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Very truly yours,  
Claire Mobley

5909 Rudyard Drive  
Bethesda, MD 20814

301-530-0081

123,  
and 13**MCP-Chairman**

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**From:** MarciPro@aol.com  
**Sent:** Wednesday, July 06, 2005 8:07 AM  
**To:** MCP-Chairman  
**Cc:** sshistory@yahoo.com; mreardon@ers.usda.gov; woodsdepk@earthlink.net  
**Subject:** Clarksburg Development & COMSAT

Please Distribute to Chairman Berlage & to Commissioners, for **BOTH 7/7 Items:**  
On Clarksburg Development, for morning session; & COMSAT, for 7:30 p.m. Session  
Thank you!

**Clarksburg Development & COMSAT**

**Concerning Site Plan #8-98001 (Phase I) and Amendments, and Site Plan #8-02014 (Phase II) and Amendments.** We believe and have supported residents in Clarksburg who have uncovered, and in the face of deception, have persevered in exposing violations in Clarksburg Town Center, RMX-2 zone concerning building height and set back requirements. It is critically important that all accusations of violations are thoroughly investigated before final penalties are administered. This issue cannot be rushed or glossed over, but must be transparent and thorough until all violations are brought to light and only then should final penalties and remedial compliance be assessed and imposed.

**Also concerning Clarksburg, we renew our request that the superb Comsat Laboratories facing I-270 be confirmed as a Montgomery County Master Plan Historic Structure: It is extremely important to our County's, and nation's, history, socio-economically, architecturally, and environmentally, clearly meeting Master Plan criteria for designation. We endorse also the Silver Spring Historical Society's position.**

Sincerely,  
Marcie Stickle/George French, 8515 Greenwood Av. Silver Spring, MD 20912  
301-585-3817

7/6/2005

1, 2, 3

**MCP-Chairman**

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**From:** Jim Williamson [jwilliamson63@comcast.net]  
**Sent:** Wednesday, July 06, 2005 7:13 AM  
**To:** MCP-Chairman  
**Cc:** Carter, John; Krasnow, Rose; Ma, Michael; Maskal, Nellie; Loehr, Charles  
**Subject:** Enforcement and Plan of Compliance - Clarksburg Town Center

Please find attached our written testimony regarding the Board's July 7, 2005 agenda item 3, "Enforcement and Plan of Compliance", respectfully submitted for your consideration.

7/6/2005

July 5, 2005

Honorable Derick P. Berlage  
Chairman, Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, MD 20910

Dear Mr. Berlage

As residents of the Clarksburg Town Center, we wish to express our sincere appreciation for the Board's diligence in addressing the issues of building height and setback compliance within the Clarksburg Town Center (CTC). As owners of one of CTC's lowest profile townhomes, we were astonished to learn that even our own home exceeded the site plan signature set height restrictions. By design, from ground floor to roof peak our townhome is over 40 feet. Based upon on our site specific grade conditions, the grade level to roof peak height of our home exceeds 35 feet.

Like many other residents of the Clarksburg Town Center, our home is also our single largest financial investment. Our decision to invest and purchase a home in the CTC resulted after a careful and deliberate evaluation of communities, builders, and home styles. By signing contracts with the CTC builders and accepting the terms of the CTC HOA, every CTC home buyer unconditionally forfeited many of the basic rights afforded most consumer groups. In building our individual homes and our community amenities, the CTC Builders and Newland Communities have complete control and exercise their many forms of "contractual coercion with a smile" whenever they are threatened with a financially unfavorable situation. As home buyers in today's new construction market our ability to seek adequate remedies is sadly non-existent.

While the concept of the Clarksburg Town Center as established by the Master Plan may not have focused on the particulars of building height and setbacks, it is clear to those that have invested time in understanding the history of the CTC's development, that the community's vision of what would become Clarksburg Town Center included imperatives with respect to building heights and setbacks. As expressed in the Site Plan Signature Set and Site Plan Enforcement Agreement, these imperatives are embodied in the CTC Builder's and Newland Communities' "contract" with the community. Regardless of the less stringent underlying terms approved by the Board, this "contract" represents the binding commitment made to the community by the CTC Builders and Newland Communities. A contract and commitment the Planning Board must uphold and enforce on behalf of the community.

The CTC Builders and Newland Communities have forever distorted and altered the vision of the Clarksburg Town Center. Not only have they distorted the vision in form (heights & setbacks), as evidenced in range and tone of prior testimonies the Board has received from CTC residents, they have also broken & divided the spirit of the CTC community. One CTC builder markets itself on a theme that the builder



would never build a home they wouldn't feel comfortable moving their families into. Who was building the CTC community that they would feel comfortable moving their families into? How should those parties be held accountable? What will it take to hold the CTC Builders and Newland Communities responsible for restoring the community's vision of the Clarksburg Town Center?

We strongly encourage the Board through their authority for upholding the community's "contract" with Newland Communities and the CTC builders, to exercise the maximum financial penalties and punitive actions possible under the law. Newland Communities and the CTC Builders must be held accountable for restoring the vision of the Clarksburg Town Center. We were once told by a CTC Builder's agent that if they as a builder made a major mistake, that they would tear down a home and rebuild it if they had to. If that is what it takes to restore the community's vision of the Clarksburg Town Center, then so be it. The Board must have the courage of conviction to take such actions in the Plan of Compliance.

Further, we request the Board, on behalf of the entire CTC community, forward the matter onto the Maryland State Attorney General and the appropriate Federal authorities for investigation and action under the state and federal Consumer Protection Acts. The deception, fraud, misrepresentation, and suppression/omission of material facts in the context of consumers investing in the Clarksburg Town Center, is unfair and deceptive trade on the grandest scale. All responsible parties must be held accountable and be made to answer for the deception of \$400M in consumer investments in the Clarksburg Town Center vision.

Lastly, the alteration of documents with the "force of law" by a MNCPPC staff member, demands a thorough investigation and if the alterations were coerced, an exhaustive criminal reckoning of all parties who were involved.

Only when these actions are taken by the Board will the community's vision of the Clarksburg Town Center be restored, and will the CTC Builders and Newland Communities respect the rights of the community they serve and the consumers which have invested in them.

Sincerely,

James H. Williamson  
23610 Public House Rd  
Clarksburg, MD 20871

Rocio A. Williamson

Cc: John Carter  
Rose Krasnow  
Michael Ma  
Nellie Maskal  
Charles Loehr

**MCP-Chairman**

---

**From:** Barbara Falcigno [bfalcigno@olneycoalition.org]  
**Sent:** Tuesday, July 05, 2005 11:37 PM  
**To:** MCP-Chairman; Robinson, John; Wellington, Meredith; Allison Bryant; Wendy Purdue  
**Cc:** Carter, John; Afzal, Khalid; Mike Knapp; Marilyn J. Praisner; Marlene Michaelson  
**Subject:** Clarksburg violations and sanctions

July 7, 2005

Dear Chairman Berlage and Planning Board Commissioners,

One of the reasons Montgomery County is a great place to live is its master plans. As Olney looks forward to redevelopment of its town center, we are very concerned about the implementation process once a site plan is approved. The violations that have occurred in Clarksburg are inexcusable and further erode the public's trust in our own government.

We support the proposed independent review of the development process since all approved projects must follow the rules and the law. However, we believe a thorough investigation must be done for all alleged violations in order to have a comprehensive review of the process.

Punishment for violations should be extreme. We applaud the staff for recommending the maximum allowable fine of \$500.00 per unit. If it is up to the Board to specify how many days each project has been in violation, a much larger fine can be imposed. Large fines will not only discourage future violations but be a step in restoring the public's trust.

Sincerely,

Barbara Falcigno  
President, the Olney Coalition



## **MCP-Chairman**

---

**From:** Joanne.E.Clark@usdoj.gov  
**Sent:** Wednesday, June 29, 2005 3:55 PM  
**To:** MCP-Chairman  
**Subject:** Clarksburg Town Center

**RECEIVED**  
1047  
JUN 30 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Mr. Derick P. Berlage, Chairman

Montgomery County Planning Board

8787 Georgia Ave, Silver Spring MD 20910-3760

Phone: 301-495-4605

Fax: 301-495-1320

Email - mcp-chairman@mncppc-mc.org

Honorable Derick Berlage:

I am a Clarksburg Town Center Resident, and I support the Clarksburg Town Center Advisory Committee and its actions on behalf of Clarksburg Town Center (CTC) and the greater Clarksburg community. The CTCAC has worked extremely hard on behalf of CTC and the greater Clarksburg community to ensure that the town they, and I, bought into, is the town we envisioned based on the CTC Master Plan. The developer has not complied with the stipulations of the Site Plans and its Enforcement Agreement. Please find that there was a violation, and decide on a course of corrective action.

In addition to my overall concerns that the developers have not complied with the Site Plans and its Enforcement Agreement, I am specifically alarmed at the developer's plans to build apartments in the retail center of the town center. Prior to making a commitment to purchase a home in the CTC, I was assured that the retail center would be just that, a retail center, and that there would be no apartments and/or condos in the retail center.

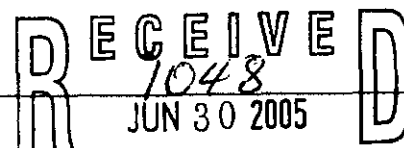
Also, the manor home that is being built next to my unit of townhouses on Overlook Park Drive is a major concern. First, instead of having the first floor of the manor home built on the same level as my unit, the terrace level is starting at what appears to be 1½ stories up. If there is no adjustment to this building, it will tower over the homes and it will NOT be compatible to the existing townhomes. I am informed by the CTCAC that no mention of this terrace was made by Board's Staff at the Hearing in February. I believe Staff had a duty to disclose this terrace as the height of the building was a major concern to the CTCAC and you specifically asked for assurances from Developer's Counsel that this building would not exceed 45 feet and would be compatible to existing structures. Please ensure the height requirement for this manor home is in keeping with the existing homes, even if that means redesigning the building. Second, there is no parking provided with this building. I also understand from the CTCAC that six additional parking spaces were requested (in the alley) for this particular Manor Home. What can be done to ensure that the parking on my street is not going to be a safety concern, particularly with a park directly across the street? Perhaps, the Board should reconsider its decision to locate a Manor home in this location as I understand that it isn't in keeping with the original project plan land use nor the Phase 1 Signature Site Plan and its Enforcement Agreement.

Thank you for listening to my concerns.

Joanne Clark

**MCP-Chairman**

**From:** Diane King [dking@admin.org]  
**Sent:** Wednesday, June 29, 2005 2:14 PM  
**To:** MCP-Chairman  
**Subject:** Violation: Newland



OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

I'm a Clarksburg Town Center resident, and I support the committee and its actions on behalf of CTC and the greater Clarksburg community. The developer has not complied with the stipulations of the Site Plans and its Enforcement Agreement. Please find that there was a violation, and decide on a course of corrective action. This is my home. And I care. Thank you,

***Diane Landry King***

6/29/2005

**MCP-Chairman**

**From:** heather lorenzo [heather@forensic-media.com]

**Sent:** Wednesday, June 29, 2005 7:50 PM

**To:** MCP-Chairman

**Subject:** clarksburg town center

**RECEIVED**  
1049  
JUN 30 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Honorable Derick Berlage,

I am a resident at Clarksburg Town Center. I am very upset that the developer has not complied with the stipulations of the the Site Plans and its Enforcement Agreement. I support the CTCAC and all its efforts on behalf of the Clarksburg community. Please hold the developer accountable for its violations!

Sincerely,

Heather N. Lorenzo, M.D.

**MCP-Chairman**

**From:** Jim Jenness [jimjenness@comcast.net]  
**Sent:** Wednesday, June 29, 2005 9:22 PM  
**To:** MCP-Chairman  
**Subject:** Clarksburg Town Center

RECEIVED  
1050  
JUN 30 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Honorable Derick Berlage:

As a Clarksburg Town Center Resident, I am concerned that our developer, Newland, has not insured compliance with the Master Plan for the development. I support the Clarksburg Town Center Advisory Committee and the work it has done for the residents of Clarksburg Town Center as well as for the "older" Clarksburg community. The developer has not complied with the stipulations of the Site Plans and its Enforcement Agreement. Please find that there was a violation, and decide on a course of corrective action. I wanted to attend the upcoming meeting myself, but I will be in California on family business that day.

Sincerely,

Jim Jenness  
23603 Sugar View Drive  
Clarksburg, MD

6/30/2005



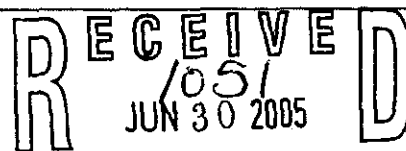
**MCP-Chairman**

**From:** Gail Greenfield [gailgreenfield@comcast.net]

**Sent:** Wednesday, June 29, 2005 9:35 PM

**To:** MCP-Chairman

**Subject:** Newland Site Plan violation



OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Mr. Derick Berlage:

I am a resident of Clarksburg Town Center and am writing to complain that Newland, our developer, appears to have violated the Site Plans for the community and its Enforcement Agreement. I ask that at the public hearing on July 7 you find Newland in violation and suggest an appropriate remedy.

Best regards,

Gail Greenfield

6/30/2005

## MCP-Chairman

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**From:** Paul Bender [pgbender@comcast.net]  
**Sent:** Wednesday, June 29, 2005 10:19 PM  
**To:** MCP-Chairman  
**Subject:** Clarksburg Town Center Developer Violations

RECEIVED  
1052  
JUN 30 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Honorable Derick Berlage,

I am a resident of the Clarksburg Town Center. Based on the original site plans I saw in January, 2002, prior to purchasing my home, I think that Newland Homes, the current developer of the Town Center, has violated not only the letter of the site plans, but the spirit of the community that was sold to the residents. Specifically, the drastic reduction in retail area, the reconfiguration of retail area in a more "strip-mall" (rather than pedestrian-friendly), and the increase in the density and the height of the housing in the community are all obvious violates Newland has made that do not have the best interest of the community in mind.

I support the Clarksburg Town Center Action Committee's actions on behalf of the Clarksburg Town Center, the community of Clarksburg, and Montgomery County. Please consider the changes between the original Site Plans and those proposed by Newland Homes, and I am sure that you will agree that the developer has not complied with the stipulations of the plans, and that a violation has been committed and a course of corrective action is necessary.

Respectfully yours,

Paul Bender  
12873 Murphy Grove Terrace  
Clarksburg, MD 20871

## MCP-Chairman

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**From:** Dr. J Todd [docjen@hotmail.com]  
**Sent:** Wednesday, June 29, 2005 9:23 AM  
**To:** MCP-Chairman  
**Subject:** CTC developer comment

RECEIVED  
1053  
JUN 29 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Hon. Mr. Berlage:

I am a Clarksburg Town Center Resident, and I support the committee and its actions on behalf of CTC and the greater Clarksburg community. The developer has not complied with the stipulations of the Site Plans and its Enforcement Agreement. Please find that there was a violation, and decide on a course of corrective action. Thanks.

Dr. Jennifer Todd

## **MCP-Chairman**

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**From:** Lewis Siegel [lewis.siegel@gmail.com]  
**Sent:** Wednesday, June 29, 2005 9:50 AM  
**To:** MCP-Chairman  
**Cc:** Loehr, Charles; Krasnow, Rose; Carter, John  
**Subject:** Clarksburg Town Center Reconsideration Hearing

**RECEIVED**  
1054  
JUN 29 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Mr. Chairman:

I am a resident of the Clarksburg Town Center. I was quite relieved to learn that the Board has scheduled a reconsideration hearing for July 7, 2005 on the violations, enforcement, and mitigation in connection with the site plans for the Town Center.

While the events that have transpired throughout the planning process for this project have not been trivial, I, and I am certain that others as well, was appalled to learn the details and extent of the completely inappropriate behavior and utter disregard for the legal process that occurred by the Board and its staff. It is now time to address the issues raised in the June 1 letter of Mr. David W. Brown, of Knopf & Brown, Counsel to the Clarksburg Town Center Advisory Committee (CTCAC). That letter was sent to Ms. Michele Rosenfeld, Associate General Counsel of MNCPPC. These are many of the same things that have previously been raised by the CTCAC in earlier hearings, only to have fallen on the deaf ears of the Board.

Perhaps now, thanks to the superbly-documented discoveries described by Mr. Brown, the Board will do the right thing--hold the developers of Clarksburg Town Center accountable for the site plan violations and order the cessation of further construction until all of the issued have been resolved. Community trust needs to be restored to the process whereby the Planning Board looks out for the interests of the citizens it is trying to serve and protect.

Thank you for your consideration.

Lewis B. Siegel  
23617 Public House Road  
Clarksburg, MD 20871

RECEIVED  
1055  
JUN 29 2005

**MCP-Chairman**

**From:** John Philbeck [philbeck@gwu.edu]  
**Sent:** Wednesday, June 29, 2005 10:38 AM  
**To:** MCP-Chairman  
**Subject:** Clarksburg Town Center

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Chairman Berlage,

I am a resident of Clarksburg Town Center (CTC), and I support the CTC advisory committee and its actions on behalf of CTC and the greater Clarksburg community. The developer has not complied with the stipulations of the Site Plans and its Enforcement Agreement. Please find that there was a violation, and decide on a course of corrective action.

Thank you,

John Philbeck,  
Clarksburg Town Center

6/29/2005

**MCP-Chairman**

**From:** Pyrdol, John [JOHN.PYRDOL@HQ.DOE.GOV]  
**Sent:** Wednesday, June 29, 2005 10:55 AM  
**To:** MCP-Chairman  
**Cc:** 'DDCEvelynF@aol.com'  
**Subject:** Clarksburg Town Center

RECEIVED  
1056  
JUN 29 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Chairman Berlage:

I am writing as a very concerned citizen of Clarksburg Town Center.

I have lived in Montgomery County for 30 years and have seen both the good and the bad of development within the County.

I fully support the actions of the CTCAC in representing the interests of the citizens of the Town Center.

While it is a little late in the process, I applaud your efforts to finally hear all the issues relating to the builders' and the Planning Board's, ignoring of clear and detailed provisions in the Master Plan and the site plan for Clarksburg Town Center.

Clarksburg, with both its rich history, and its potential for well-designed, high-quality development should be the jewel of the County's development in its northern areas. Instead, the citizens of Clarksburg, both those going back generations in Clarksburg and those newly arrived, find ourselves firmly united against builders who have already reneged on many of the important provisions they agreed to in the development plans and a Planning Board who is now on record as having looked the other way to ignore these violations and on the record as actually changing documents after-the-fact to support this coverup.

The violations and broken agreements are many:

- the developers repeated built in violation of clear and detailed site plans
- the developers are now trying to file amendments to the planning documents to get the Board's ok for all these past violations
- the Planning Board was either totally "asleep-at-the-switch", or knowingly involved in these violations - both appear to be true
- hundreds of homes in the Town Center are already in violation due to excessive height, too close to streets, etc., etc., etc.

While there is already a long and ugly list of violations, broken agreements, and possibly criminal behavior it is not too late to salvage much of what the vision for Clarksburg always was.

As two of thousands of concerned citizens in Clarksburg please clean up this mess within the Board, remediate whatever mistakes have been made, and move forward with strict adherence to the plans that have been laid out for Clarksburg.

Sincerely,

Mr. and Mrs. John Pyrdol  
12724 Murphy Grove Terrace  
Clarksburg, MD. 20871

301-401-2271

6/29/2005



**MCP-Chairman**

**From:** JCima@aol.com  
**Sent:** Wednesday, June 29, 2005 11:16 AM  
**To:** MCP-Chairman  
**Subject:** Clarksburg Town Center

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

I am writing as a Clarksburg Town Center Resident to inform you that I am complete support of the CTCAC and all that this committee is trying to do for our community. Before purchasing here I reviewed the Montgomery Master Plan and envisioned a community that I looked forward to living in. Now, it appears that the developer has the opportunity to change the master plans and meet their own financial goals rather than keep within the approved plans. I strongly object that Newland has this opportunity - especially when community benefits such as libraries, pools, a neoclassical town center are being sacrificed to benefit a developer that has no desire to build a cohesive community.

This is turning into "just another development" rather than a jewel of a small town center that no one, especially Montgomery County should be proud of. Who shall have the power, a developer that can and will do whatever they want or Montgomery County and it's residents in Clarksburg Town Center?

Justine Cimarolli  
12831 Murphy Grove Terrace  
Clarksburg, MD 20871

6/29/2005

**MCP-Chairman**

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

**From:** Berlage, Derick  
**Sent:** Wednesday, June 29, 2005 1:33 PM  
**To:** MCP-Chairman  
**Subject:** FW: Clarksburg Town Center

-----Original Message-----

**From:** Nicoleasch@aol.com [mailto:Nicoleasch@aol.com]  
**Sent:** Monday, June 27, 2005 2:57 PM  
**To:** Berlage, Derick  
**Subject:** Clarksburg Town Center

Please see my attached letter in regards to the July 7, 2005 hearing about Clarksburg Town Center.

**Nicole Aschbrenner**  
12672 Piedmont Trail Road  
Clarksburg, MD 20871  
Phone # 301-515-9530



June 27, 2005

Mr. Derick P. Berlage  
Chairman  
Maryland National Capital Park and Planning Commission  
8787 Georgia Avenue  
Silver Spring, MD 20910

Dear Mr. Berlage:

I understand that you and your fellow commissioners will hold a daylong hearing on July 7, 2005 in response to a challenge from a few residents in Clarksburg Town Center. You intend to reconsider your earlier favorable decision, and review building heights, setbacks and progress on completing community parks and other features in our community.

In my view, this new community is progressing the way it was planned. I have lived here for 2 ½ years and I find Clarksburg Town Center to be very pleasing. I do not have a problem with the way this community is developing. In fact, as long as building continues as it is, I am in favor of what the builders are doing and hope they will continue at their current pace. For you and your fellow commissioners to spend time debating the relative height of a four-story building could unnecessarily prolong the completion of new homes & amenities, could damage our community, and could ultimately hurt property values.

It appears that these few opponents have lost their way in their pursuit of a better shopping center. I appreciate what has been done on behalf of the retail center design. My neighbors and I believe that there is now a better shape and style to the retail center. What we don't support is a crusade by these opponents – who have not been elected to represent the community – to challenge every aspect of the development of Clarksburg Town Center.

Please abandon this pointless review. We, the people of Clarksburg Town Center want progress and we want our community completed. Don't waste any more time or money on this matter.

Sincerely,

Ms. Nicole Aschbrenner  
Ms. Arleen Aschbrenner  
12672 Piedmont Trail Road  
Clarksburg, MD 20871

RECEIVED  
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JUN 29 2005

cCa  
Clarksburg Civic Association  
Clarksburg, Maryland 20871-0325

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Jun 27, 2005

The Honorable Derick Berlage  
Chairman  
The Maryland-National Capital Park and Planning Commission  
8787 Georgia Avenue  
Silver Spring, MD 20910-3760

Chairman Berlage

Members of the Clarksburg Civic Association, its Executive Committee, its Planning Committee, and I request that you strictly control growth of housing in the Clarksburg area until:

- roads are built and maintained to handle existing and anticipated traffic,
- emergency rescue service response approaching six minutes is practically possible to all units at all stages of construction and road maintenance, and
- deviations from the master plan are corrected, compensated for, adjusted for, and measures be taken to prevent any reoccurrence.

Specifically, halt the construction of houses and granting of housing permits. Rescind all currently approved housing development plans. Approve only plans that include strict conditions that can and will be proactively enforced and that force the following:

- sufficient roads, schools, emergency rescue service, and other amenities (such as sidewalks and bike paths) must be scheduled and built prior to the construction activity and residential units that are the major cause for their need;
- construction must be tied to more and sufficient permitting and enforcement;
- Fire and Rescue Service must have veto authority over every aspect of the planning, permitting, and enforcement process.

The above is required now. Residents of Clarksburg risk their lives when they travel these roads. It is risky even to live in houses not readily accessible to emergency response. We spend more time in Clarksburg road delays than in I-270 or beltway delays. Given that the build out of Clarksburg is only just starting, we have a chance to prevent disastrous consequences in the future.

Sincerely yours,

*Paul E. Majewski*

Paul E. Majewski  
President  
Clarksburg Civic Association

cc:

[mcp-chairman@mncppc-mc.org](mailto:mcp-chairman@mncppc-mc.org)

Matthews, Catherine <Catherine.Matthews@montgomerycountymd.gov>;

Scott Reilly <scott.reilly@montgomerycountymd.gov>;

ocemail@montgomerycou <ocemail@montgomerycountymd.gov>;

Duncan, Douglas <Douglas.Duncan@montgomerycountymd.gov>;

MC Council <county.council@montgomerycountymd.gov>;

Email for Maryland District 15 Delegates and Senator.

**MCP-Chairman**

**From:** alexik@comcast.net  
**Sent:** Tuesday, June 28, 2005 10:09 AM  
**To:** MCP-Chairman  
**Subject:** CTC hearing on July 7th

**RECEIVED**  
1059  
JUN 29 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Mr. Berlage,

I am writing this letter regarding the public hearing on Clarksburg Town Center scheduled for July 7th.

I am Clarksburg Town Center resident since summer 2003. Though I know Clarksburg much longer than that. I've been watching the developers come to break the grounds back in 2000. I studied the community plans, streets, amenities locations, and have done a great research on the builders before I made my final decision to settle in Clarksburg. What I see today is very very different from what was told and promised 5 years ago.

My biggest concern is that the builders does not fulfill the promised and violate the Site Plans and Enforcement Agreement. The developer and the builders think about the profit on the real estate market and totally forgot about the people who already leave and committed their investment to this community.

I am seeking your kind support and protection from the fraud intentions the developer is exercising on Clarksburg Town Center Community. I fully support the committee that the residents of CTC elected to voice out our opinions. I hope you will hear the committee and decide on urgent corrective actions. The community is developing with a very high speed. We - CTC residents and You - Montgomery County Planning Board should act together to protect and save the CTC from any type of violations.

Best Regards,

Olga Fedorova  
23725 Clarksmead Rd.  
Clarksburg, MD 20871  
[alexik@comcast.net](mailto:alexik@comcast.net)

6/29/2005

**MCP-Chairman**

**From:** EAGRANDI@aol.com  
**Sent:** Tuesday, June 28, 2005 10:16 AM  
**To:** MCP-Chairman  
**Subject:** (no subject)

**RECEIVED**  
1060  
JUN 29 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

To Whom it may Concern:

I am one of the first Clarksburg Town Center Residents, and I support the committee and its actions on behalf of CTC and the greater Clarksburg community. The developer has not complied with the stipulations of the Site Plans and its Enforcement Agreement. Please find that there was a violation, and decide on a course of corrective action.

Never mind the fact that the builder assured us that our driveway aprons would be long enough to park a car and they aren't, henceforth the parking issue of cars all over the road instead of where they should be parked. It is particularly sad to me that in a county where taxes are out of control, that this type of head turning has occurred.

Sincerely,

Eric A Grandi

23613 Clarksmead Drive

6/29/2005

## MCP-Chairman

---

**From:** energenconsulting@erols.com on behalf of nnagda@energenconsulting.com  
**Sent:** Tuesday, June 28, 2005 2:20 PM  
**To:** MCP-Chairman  
**Cc:** niren\_nagda@yahoo.com  
**Subject:** Clarksburg Town Center Violations

RECEIVED  
1061  
JUN 29 2005

Honorable Chairman and Commissioners

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

I am a Clarksburg Town Center resident, and a member of CTCAC. My wife and I are away this week and thus this short message.

I have testified before the commission and firmly believe that the developer has not complied with the stipulations of the site plans and its enforcement agreement(s) for the Clarksburg Town Center. There are numerous violations of different types. The M-NCPPC must (i) affirm that these violations exist, (ii) prescribe appropriate punitive measures against the developer and associated parties so that such violations do not occur in the future, and (iii) require that the developer and associated parties to take corrective actions in a comprehensive and timely manner to correct the wrongs that have been done by the developer.

Thank you for your consideration.

-Niren Nagda and Jaya Nagda, 12828 Clarksburg Sq Rd, Clarksburg, MD 20871.

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mail2web - Check your email from the web at  
<http://mail2web.com/> .

Katherine Orloff  
23200 Linden Vale Drive  
Clarksburg, MD 20871  
Tel: 301-515-5597  
Email: [orloffk@aol.com](mailto:orloffk@aol.com)

RECEIVED  
1062  
JUN 29 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

## FAX TRANSMISSION

TO: Mr. Derick P. Berlage, Chairman  
Montgomery County Planning Board

DATE: June 28, 2005

FAX NUMBER: 301-495-1320

NO. OF PAGES (INCLUDING COVER): -3-

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This letter has also been sent by email to Chairman Berlage.

Thanks,

*Katherine Orloff*

Katherine Orloff  
23200 Linden Vale Drive  
Clarksburg, MD 20871  
Tel: 301-515-5597  
Email: [orloffk@aol.com](mailto:orloffk@aol.com)

June 27, 2005

Mr. Derick P. Berlage, Chairman  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, MD 20910

Dear Chairman Berlage,

I am writing to you regarding the issues that have arisen over the pending settlements in Clarksburg Town Center. Four days before my June 22 settlement date, I was informed by the builder, NV Homes, that there were zoning issues that had been brought to the attention of the Planning Board by some homeowners objecting to height and setback limits. As a result, all closings for the month of June were postponed until the matter could be resolved. I am one of those people who is directly affected.

I moved to the Clarksburg area in June, 2004, after a long residence in New York. I leased a house for a year with the intention of taking the time I needed to find a specific location and type of home that best suited me. After looking at dozens of properties for several months as far south as Kentlands and as far north as Frederick, I picked Clarksburg Town Center because it provided exactly what I needed for my future home: a well-thought out, finely executed master plan, which, when building is completed, will be I believe one of the finest communities in the Mid-Atlantic area.

I purchased what was essentially a vacant lot from NV Homes on which was to be built a townhouse to my particular specifications and upgrades as offered. During the time of construction, I have taken pictures of the building progress and paid close attention to the details. I hired a private inspector for a pre-dry wall inspection and then to come back for a pre-settlement inspection. His reaction at the end of the pre-settlement inspection was that this was one of the best inspections he had ever done, that the townhouse was extremely well built, and aside from a few small cosmetic issues, which NV quickly fixed, there was nothing at all he could object to in the building.

I hired painters to start June 23. I hired a builder for an outside rear deck. I committed to a date with Moyer & Sons Movers to pack and move my furniture and effects. And most importantly, I gave notice to my landlord that I was vacating my current residence. As all this was put in motion, and four days before my settlement date, the zoning issue arose and I had to cancel all of these commitments. I had a loan rate locked at a very favorable rate which I have now lost. I am faced with moving into a suites hotel that will allow my

dog, putting all of my belongings into storage, including my computer and printers which are vital to my business, and having no address to receive my mail, much of which is business correspondence.

In addition, I am self-employed and work on a project by project basis which often takes me away from home for several months at a time. I now cannot accept work until this issue is resolved and I can move into my home. Every job I turn down costs me an enormous amount of money and damages my relationships with the contacts that I have who frequently hire me.

I don't know what it is that this particular faction of homeowners would like to accomplish. I don't know if they are aware of the disruption and hardship they are causing to so many families. What I do know is that our townhouses are well-built with great care, that they have passed every necessary legal inspection, that they are located in a beautiful developing community, and that they are sitting empty, ready for us to move into our homes. Not only is this financial hardship, it is a very serious emotional hardship. Peoples' homes are their connections to rootedness, to a sense of security, to a sense of family, to a sense of safety. The British have a saying, "Safe as houses," which means that our homes are our primary place of refuge. Without that many of us are lost. We are, in a very real sense, homeless.

I join with my fellow (hopeful but currently hapless) homeowners in asking that the Planning Board please reach an amicable settlement by the end of the July 7, 2005 meeting so we can move into our homes.

Thank you for your consideration.

Best regards,



Katherine Orloff



**MCP-Chairman**

---

**From:** Orloffk@aol.com  
**Sent:** Tuesday, June 28, 2005 5:33 PM  
**To:** MCP-Chairman  
**Subject:** RE: Clarksburg Town Center

Dear Mr. Chairman,

Attached is a letter to you and your committee regarding the situation at Clarksburg Town Center which has prevented me from moving into my NV townhome.

Thank you for taking the time to read it.

Best,

Katherine Orloff

6/29/2005

Katherine Orloff  
23200 Linden Vale Drive  
Clarksburg, MD 20871  
Tel: 301-515-5597  
Email: [orloffk@aol.com](mailto:orloffk@aol.com)

June 27, 2005

Mr. Derick P. Berlage, Chairman  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, MD 20910

Dear Chairman Berlage,

I am writing to you regarding the issues that have arisen over the pending settlements in Clarksburg Town Center. Four days before my June 22 settlement date, I was informed by the builder, NV Homes, that there were zoning issues that had been brought to the attention of the Planning Board by some homeowners objecting to height and setback limits. As a result, all closings for the month of June were postponed until the matter could be resolved. I am one of those people who is directly affected.

I moved to the Clarksburg area in June, 2004, after a long residence in New York. I leased a house for a year with the intention of taking the time I needed to find a specific location and type of home that best suited me. After looking at dozens of properties for several months as far south as Kentlands and as far north as Frederick, I picked Clarksburg Town Center because it provided exactly what I needed for my future home: a well-thought out, finely executed master plan, which, when building is completed, will be I believe one of the finest communities in the Mid-Atlantic area.

I purchased what was essentially a vacant lot from NV Homes on which was to be built a townhouse to my particular specifications and upgrades as offered. During the time of construction, I have taken pictures of the building progress and paid close attention to the details. I hired a private inspector for a pre-dry wall inspection and then to come back for a pre-settlement inspection. His reaction at the end of the pre-settlement inspection was that this was one of the best inspections he had ever done, that the townhouse was extremely well built, and aside from a few small cosmetic issues, which NV quickly fixed, there was nothing at all he could object to in the building.

I hired painters to start June 23. I hired a builder for an outside rear deck. I committed to a date with Moyer & Sons Movers to pack and move my furniture and effects. And most importantly, I gave notice to my landlord that I was vacating my current residence. As all this was put in motion, and four days before my settlement date, the zoning issue arose and I had to cancel all of these commitments. I had a loan rate locked at a very favorable rate which I have now lost. I am faced with moving into a suites hotel that will allow my dog, putting all of my belongings into storage, including my computer and printers which

are vital to my business, and having no address to receive my mail, much of which is business correspondence.

In addition, I am self-employed and work on a project by project basis which often takes me away from home for several months at a time. I now cannot accept work until this issue is resolved and I can move into my home. Every job I turn down costs me an enormous amount of money and damages my relationships with the contacts that I have who frequently hire me.

I don't know what it is that this particular faction of homeowners would like to accomplish. I don't know if they are aware of the disruption and hardship they are causing to so many families. What I do know is that our townhouses are well-built with great care, that they have passed every necessary legal inspection, that they are located in a beautiful developing community, and that they are sitting empty, ready for us to move into our homes. Not only is this financial hardship, it is a very serious emotional hardship. Peoples' homes are their connections to rootedness, to a sense of security, to a sense of family, to a sense of safety. The British have a saying, "Safe as houses," which means that our homes are our primary place of refuge. Without that many of us are lost. We are, in a very real sense, homeless.

I join with my fellow (hopeful but currently hapless) homeowners in asking that the Planning Board please reach an amicable settlement by the end of the July 7, 2005 meeting so we can move into our homes.

Thank you for your consideration.

Best regards,

*Katherine Orloff*

June 26, 2005

Charles and Margaret Clinton  
12731 Piedmont Trail Rd.  
Clarksburg, MD 20871  
(301) 916-9303  
charlesclinton2003@yahoo.com

RECEIVED  
1003  
JUN 29 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Mr. Derick P. Berlage, Chairman  
Montgomery County Planning Board  
8787 Georgia Ave.  
Silver Spring, MD 20910-3760

Mr. Berlage,

I am writing to you out of concern as a current resident of Clarksburg Town Center (CTC). My wife and I have been residents of CTC for the past three years. In fact, we were among the very first individuals to move into the neighborhood. Previous to owning a town home in CTC, we lived in an apartment in the Kentlands, an area that we enjoyed immensely due to its unique attributes including its "new urbanism" design and mixture of retail and residential areas within walking distance.

When we saw the master plans for Clarksburg Town Center in 2001, we immediately recognized a community that we wanted to be part of and took our initial first step into home ownership, moving into the community in June 2002. Among the attributes that attracted us to CTC included:

- A mixture of residential and retail areas that encouraged a unique "town" atmosphere
- Green areas, parks, and walking/jogging trails
- Schools within the community
- Architectural and landscape standards that would promote a common visual theme through the community

Recently, it has come to my attention through discussions with my neighbors that the final development work for Clarksburg Town Center may include changes that are not in line with the original master plan. What I have heard concerns me greatly and has prompted this letter to you. Specifically, I am concerned that actions by the developer of CTC, Newland Communities, will shortchange the original vision of CTC and lead to a development that does not fulfill the original master plan for CTC and does not meet our expectations that we held when we chose to live in CTC.

Furthermore, it is also my understanding that the original plan for CTC was developed in conjunction with long-term residents of Clarksburg through the Clarksburg Civic Association. It seems that deviations from the original plan for CTC would violate the trust that the Clarksburg Civic Association placed in the original developer of CTC.

My specific concerns regarding Clarksburg Town Center include:

- Deviations from the original master plan for CTC by the developer including changes to the retail areas of the community that would reduce the size and scope of the retail area. The Clarksburg Town Center Advisory Committee (CTCAC) believes that these changes will hurt the viability of the retail area, leading to a very limited series of shops and restaurants that will not have enough of a "critical mass" to attract customers and ensure the long-term viability of these endeavors. Note that it was related to me that of the four new developments in Clarksburg, Clarksburg Town Center was slated to have the largest retail location and retail areas of the other three communities were decreased in size due to the anticipated size of the CTC retail area.
- Deviations from the original master plan that will lead to decreases in the community amenities that were originally promised. Two examples that I am aware of include the CTC library and the community gym.
- Non-compliance by the developer with previously established community standards including building height and setback standards.
- Delays in construction of community amenities – Completion of the community pool was originally promised as summer 2004. It was then changed to Memorial Day 2005 and has now been pushed back to July of 2005.
- Final paving – our house has been completed since June of 2002 and our corner of CTC has been complete construction-wise for some time. The streets outside our home still have not had their final paving.
- Stringtown Road – Stringtown Road between 355 and CTC, due significant construction traffic over the past three years, is in a state of significant disrepair. In fact, I have not been on another road in Montgomery County that is as bad as Stringtown Road. There are areas of the road that have either disintegrated or are badly warped, necessitating drivers to slowly pick their way down the road attempting to avoid the worst areas of the road.

My wife and I were extremely pleased when we gained the opportunity to live in Clarksburg Town Center and continue to look forward to the unfolding of a great community for Montgomery County. I therefore submit this letter in an attempt to protect those future plans and to help support the goal of creating the best community possible for Clarksburg Town Center residents.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles Clinton". The signature is fluid and cursive, with a long, sweeping underline.

Charles Clinton

## MCP-Chairman

---

**From:** Latoni, Alfonso (NIH/NIA) [latoniA@nia.nih.gov]  
**Sent:** Friday, July 01, 2005 5:54 AM  
**To:** MCP-Chairman  
**Subject:** CLARKSBURG TOWN CENTER JULY 7TH HEARING

Mr. Derick P. Berlage, Chairman  
Montgomery County Planning Board  
8787 Georgia Ave., Silver Spring MD 20910-3760

RECEIVED  
JUL 01 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Mr. Chairman Berlage:

I trust all is well. I write to you once again in support of the towering efforts and actions of the Clarksburg Town Center Advisory Committee. I am a Clarksburg Town Center Resident. All the same, I write in support of the Greater Clarksburg community.

As you know, the developer has not complied with the stipulations of the Site Plans and its Enforcement Agreement. Therefore, I hereby respectfully request that you please find that there was a violation, and decide on a course of corrective action, at the next hearing scheduled for July 7th, 2005.

Truly yours,

Alfonso R. Latoni  
23802 Burdette Forest Road  
Clarksburg Town Center  
Clarksburg, MD 20871

**MCP-Chairman**

---

**From:** Borsas, Ilias \* [Ilias.Borsas@FDA.GOV]  
**Sent:** Thursday, June 30, 2005 12:02 PM  
**To:** MCP-Chairman  
**Cc:** 'Smith, Carol Leigh (NIH/NCI)'  
**Subject:** Clarksburg Town Center

RECEIVED  
/005  
JUL 01 2005

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Mr. Berlage,

my family and I have been residents of the Clarksburg Town Center since late November 2004. We chose to buy a property in this community, because of the location of the beautiful town of Clarksburg. We are a hard working family and want to live in a quiet community like Clarksburg, and also enjoy the many pluses that Montgomery County offers to its residents, such as top notch schools, safe roads, and well planned and architected communities.

The Clarkburg Town Association would like to work with your office to ensure that the developers deliver to the promised plan, and residential and office structures are built according to the proposed and accepted specifications. We are aware of a number of violations (by the builders) on the height of the structures, etc. We would also like to see roads in and around the community be built well and the speed limit to be at a reasonable level. For example, the speed limit signs on Piedmont Road (it has not opened as of yet) are "40 mph". This is a bit excessive, considering it is a residential area, mostly families with young children. The residents would also like to see stop signs along a number of points, so families can cross the street.

We thank you for your cooperation on these matters.

Best Regards,

Ilias Borsas  
Tel: (240) 848-1589

7/1/2005

Attachment 1

August 16, 2004

The Honorable Derick Berlage  
Chairman  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

RECEIVED  
1288  
AUG 19 2004

Re: Proposed Changes to Project Plan for Clarksburg Town Center

OFFICE OF THE CHAIRMAN  
THE MARYLAND HISTORICAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Mr. Berlage:

As Co-Chairs of the Clarksburg Town Center (CTC) Advisory Committee, we are writing as the collective voice of the community to express our strong opposition to the deviations (as contained within the Site Plan proposed by the developer, Newland Communities) from the approved Project Plan #9-94004. These deviations concern the commercial and other sections of the development as reflected in the Site Plan presented by Newland Communities during the July 27, 2004 meeting with CTC residents.

As proposed by the original applicants and developer, Clarksburg Town Center Venture and Terrabrook, and approved by the Planning Board, Clarksburg Town Center is a neo-traditional community reflecting the "New Urbanism" school of community planning and design. Accordingly, it is designed and intended to provide a unique pedestrian-oriented neighborhood that allows residents to walk to the recreational, retail, civic and other facilities dictated in the Master and Project Plans previously approved by the Board. Specifically, the Town Square was designed and intended to serve as the focus of public life, with retail and commercial establishments located on the East side of the development's Main Street and Town Square. The Master Plan also gave careful consideration to protecting the character of Clarksburg's Historical District, the Gateway to the Town Square.

Clarksburg Town Center is in the RMX-2 Zone, which allows for both "standard" and "optional" methods of development. Under the "standard" method, office and retail uses are not allowed at all. Accordingly, the developer submitted and the Board approved an "optional" method of development that allowed for high-density residential units mixed with commercial uses if in accordance with the guidelines of the Master Plan, and that explicitly required certain public amenities and facilities. It appears that the developer thus could not have gotten approval for this high-density residential project without including in its application the community-oriented and pedestrian-friendly plans for the Town Center's retail and commercial development that the Commission ultimately approved.

Newland Communities (who purchased the development from Terrabrook late last year) is now proposing a radical change to the retail and commercial areas of the Town Center. Under this proposal, the retail and commercial establishments to be located along Main Street and the Town Square will be replaced with four-story condominium buildings and other multi-family residential units, thus increasing the residential density of what is already a high-density development. The retail and office square footage has been reduced by 53.2% of the approved square footage and the proposed plan consists of a huge square parking lot bordered by a 58,800-square foot grocery superstore (reportedly Giant) with retail establishments adjoining on each side, a proposed drive-thru bank, one freestanding restaurant and a combination office/retail building located along the south side of the parking lot.



Although its configuration is in the shape of a square, Newland Communities' proposed change is the very antithesis of the "Town Square" concept that is a defining characteristic of neo-traditional communities, and that was at the heart of the Clarksburg Town Center plan that the Board approved. It simply replaces the pedestrian-friendly, community-oriented Town Center concept with a regional strip mall, but with one important difference—Newland Communities' proposed regional strip mall will be located in the heart of a high-density residential community. Indeed, one of the two principal thoroughfares for automobile ingress to and egress from the shopping center will be through and/or adjacent to the Town Square, departing even further from the pedestrian-friendly approach that both the Master and Project Plans define as the main characteristic of Clarksburg Town Center.

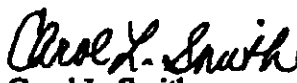
As you can well imagine, Newland Communities' proposal is inconsistent with the Planning Board's Master Plan and subsequent Project Plan and is not reflective of the community marketed by the builders of CTC nor is it in keeping with the concept that was solicited at the Visitor's Center when my neighbors and I were making our decisions to purchase homes in Clarksburg Town Center. Many others in the vicinity of CTC are opposed to Newland Communities' proposed changes as well. At the July 27, 2004 meeting with Newland Communities to discuss their proposal, the room was filled to capacity with concerned Clarksburg residents from the Town Center and from the general community, while additional concerned residents stood in the hall. The following week, a meeting held by residents of CTC regarding the same issue attracted over 100 residents and the CTC Advisory Committee was established to address these issues. The Clarksburg Civic Association, which has been instrumental in the planning and implementation process for Clarksburg Town Center for over a decade is also opposed to Newland Communities' deviation from the Project and Master Plans.

Based on these issues, we respectfully request that the Board not approve Newland Communities' proposed site plan, and require Newland Communities to abide by the original terms of the Project Plan. We would ask that the Board not take any action on the proposed site plan, requests for amendments, or requests for zoning variances pertaining to a reduction in the RDT Zones until it has studied the proposal thoroughly and received the input of the residents of the Clarksburg Town Center, the Clarksburg Civic Association and all other interested parties. Thank you for your consideration.

Sincerely,



Kimberly A. Shiley  
Co-chair, CTC Advisory Committee



Carol L. Smith  
Co-chair, CTC Advisory Committee

cc: Sue Edwards, Team Leader I270 Corridor Area, M-NCPPC  
John Carter, Chief, Community Based Planning Division, M-NCPPC  
Wynn Withhans, Development Review, Planning Department, M-NCPPC  
Clarksburg Civic Association  
Clarksburg Historical Society  
Montgomery County Historical Society  
Doug Duncan, County Executive, Montgomery County  
Kathy Matthews, Director of Upcounty Regional Services  
Nancy Hislop, Assistant Director of Upcounty Regional Services  
Mike Knapp, County Council, Montgomery County  
Brian Long, Aide to Council Member Mike Knapp  
Kimberly Ambrose, Vice President of Operations, Newland Communities  
Taylor Chess, Vice President Investments, Regency Centers  
Susan Singer-Bart, The Gazette

11/11/2004

**CLARKSBURG TOWN CENTER ADVISORY COMMITTEE**  
Clarksburg, MD 20871

**S**

January 25, 2004

The Honorable Derick Berlage  
Chairman  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Subject: Building Heights in Clarksburg Town Center  
Phase I Site Plan #8-98001 and Phase II Site Plan #8-02014

Dear Mr. Berlage:

We are writing to you in response to the letter we received from Rose Krasnow relative to height violations within Clarksburg Town Center development. The Clarksburg Town Center Advisory Committee (CTCAC) has reviewed the letter and is astounded by the determination of the Staff on this issue.

The CTCAC, and the entire Clarksburg community, had placed its faith in M-NCPPC, expecting M-NCPPC to faithfully serve as guardians of the Master Plan intent and to ensure adherence to the Board-approved Project Plan. Unfortunately, we find not only that the M-NCPPC Staff has been grossly negligent in the Site Plan review process, but, based on the subsequent Staff determination regarding the height violations, has fallen abysmally short of serving the citizens of Clarksburg. Therefore, we respectfully request a full Board hearing on this issue.

For your record, we have attached a copy of Rose's letter with our specific response to each point. We have also attached our document reference table highlighting supporting detail for our case and position on the matter.

We would like the Board to consider this letter as an issuance of a formal complaint regarding height violations within Clarksburg Town Center development. Based on the provisions of Zoning Ordinance 59-D-3.6, we would also ask the Board to exercise its right to issue a stop work order pursuant to Site Plans previously approved for buildings not yet built, but also having the potential to exceed the height guidelines as defined in the Board-approved Project Plan Findings. Without such action on the Board's part, we fear that development of other buildings will proceed and the community will have no recourse.

Please respond to us with the earliest possible date and time for scheduling of a full Board hearing on this issue. In view of the pending development of other buildings in question, we believe action must be taken immediately. Scheduling of a hearing date prior to February 10<sup>th</sup> will be greatly appreciated.

Sincerely,

Amy Presley, Kim Shiley, Carol Smith, CTCAC Co-Chairs,  
on behalf of the CTCAC

**MC Department of Permitting Services**

255 Rockville Pike, 2nd Floor  
Rockville, MD 20850-4186  
(240)777-6300 Fax (240)777-6262

**COMBUILD Building Application****Report Date**

06/16/2005 08:53 AM

**Submitted By**

Page 1

P# 353485

**Address** 23620 OVERLOOK PARK DR  
CLARKSBURG MD 20871-

**Location**

There are no contacts for this site

No Addresses are linked to this Application

No Addresses are linked to this Application

No Parcels are linked to this Application

No Parcels are linked to this Application

<b>Primary</b> Y	<b>Capacity</b> APPL	<b>Contact ID</b> AC872738 <input type="checkbox"/> Foreign
<b>Name</b> BA CLARKSBURG LLC		
<b>Day Phone</b> (301)220-0100 x	<b>Eve Phone</b>	<b>Address</b> 6401 GOLDEN TRIANGLE DRIVE
<b>Pager</b>	<b>PIN #</b>	GREENBELT
<b>Fax</b>	<b>Mobile</b>	MD
<b>E-Mail</b>		20770
<b>Organization</b>	<b>Position</b>	<b>Profession</b>
<b>Comments</b>		
No Comments		

No Contractors

<b>Check Fees</b>	<b>Fees Successful</b>
AUTOMATION FEE (\$0.00)	Paid
AUTOMATION FEE (\$0.00)	Paid
AUTOMATION FEE (\$0.00)	Paid
CONSTRUCTION PERMIT FEE (\$0.00)	Paid
FILING FEE (\$0.00)	Paid
IMPACT TAX >3/04-CLARKSBURG (\$0.00)	Paid
OVERTIME FEE FOR REVIEW (\$0.00)	Paid
SCHOOLS IMPACT TAX (\$0.00)	Paid
<b>Check Inspections</b>	<b>Inspections Failed</b>
3276397 251 #1 FINAL	No Action
<b>Check Reviews</b>	<b>Reviews Successful</b>
7071 ZONING DPS ZONING REVIEW	Approved
57072 ARCHTRL ARCHITECTURAL	Approved

**MC Department of Permitting Services**

255 Rockville Pike, 2nd Floor  
 Rockville, MD 20850-4186  
 (240)777-6300 Fax (240)777-6262

**COMBUILD Building Application****Report Date** 06/16/2005 08:53 AM**Submitted By****Page 2**

7757073 LIFE LIFE SAFETY	Approved
7757074 STRUCTURAL STRUCTURAL	Approved
7757075 MECHANICAL MECHANICAL	Approved
7757076 ELECTRICAL ELECTRICAL	Approved
7757077 PLANRFINAL PLAN REVIEW FINAL	Approved
7757078 MNCPPC MARYLAND PARK & PLANNING	Approved
Check Conditions	Conditions Successful
STORM MET (STORMWATER REQUIREMENTS MET?)	Approved, APPROV
IMPERVAREA IMPERVIOUS AREA IS REQUIRED	Approved, APPROV
SEDMNT REQ SEDIMENT CONTROL NO. REQUIRED	Approved, APPROV
WSSC WASH SUBURB SANITATION COMMSN	Approved, APPROV
Check Alert Conditions	Alert Conditions Successful
Check Licenses	Not Checked
Check Children Status	Children Successful
Check Open Cases	0

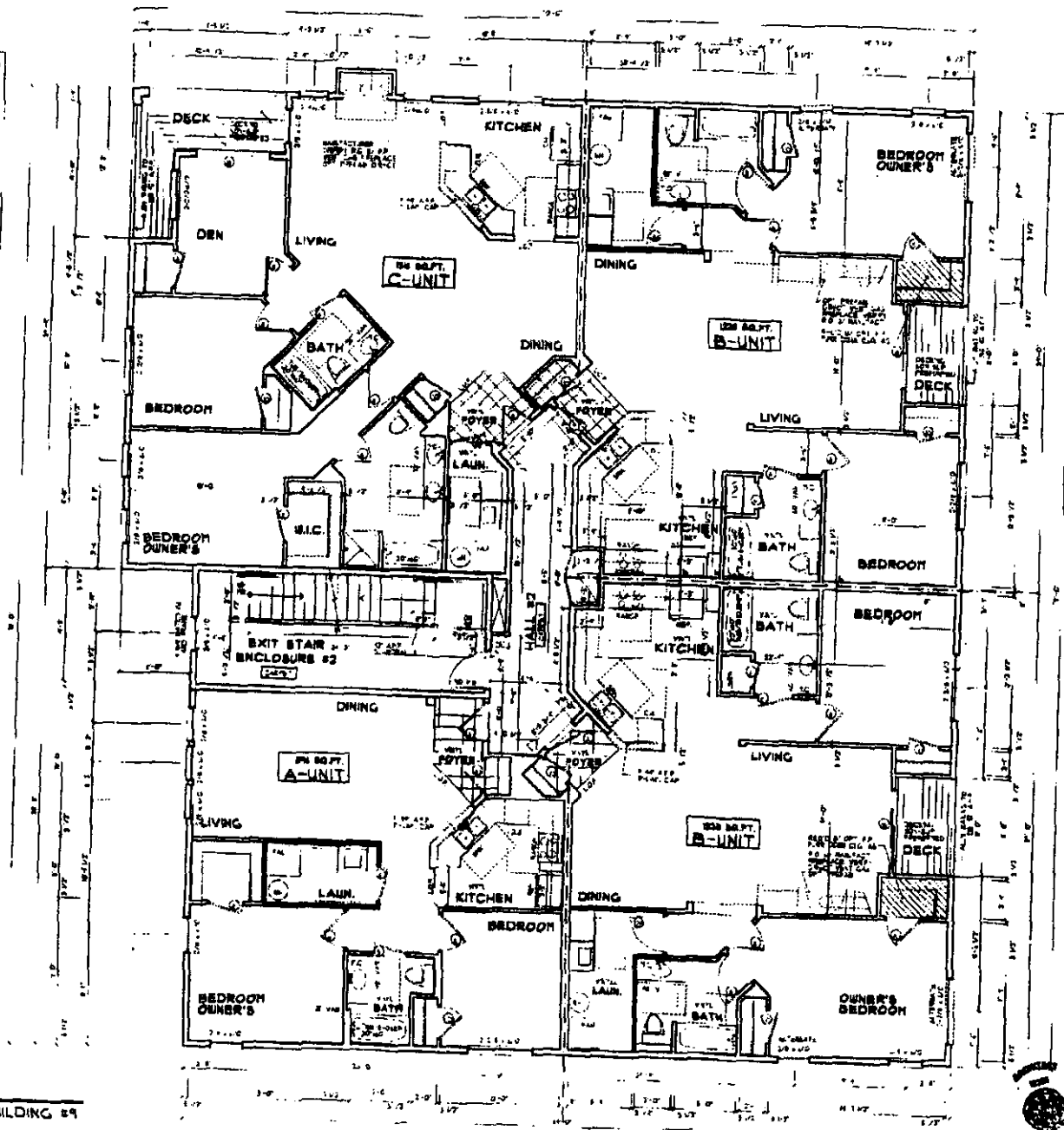
3276387 251 1 0 HARRR

7757071 ZONING	1	N	08/03/2004 10:46	08/17/2004 13:52	08/17/2004 13:52
NIBLO					
7757078 MNCPPC	1	N	08/03/2004 10:46	08/18/2004 14:52	08/18/2004 14:52
ORNE					
7757072 ARCHTRL	1	N	08/03/2004 10:46	08/20/2004 15:12	09/29/2004 11:08
HEIDE	see ole				
7757073 LIFE	1	N	08/03/2004 10:46	08/29/2004 11:19	08/29/2004 11:19
HEIDE					
7757074 STRUCTURAL	1	N	08/03/2004 10:46	10/01/2004 09:17	10/04/2004 07:55
NGO					
7757075 MECHANICAL	1	N	08/03/2004 10:46	10/04/2004 09:35	10/13/2004 09:35
HTAYM	see OLE on A/P 353463				
7757076 ELECTRICAL	1	N	08/03/2004 10:46	10/04/2004 13:39	10/15/2004 13:25
BLANT					
7757077 PLANRFINAL	1	N	08/03/2004 10:46	10/15/2004 14:47	10/15/2004 14:47
BLANT					

No Employee Entries

No Log Entries

44-38861-264

[illegible]

**BUILDING #9**

**A-2**

SCHEMATIC FLOOT LAYOUT

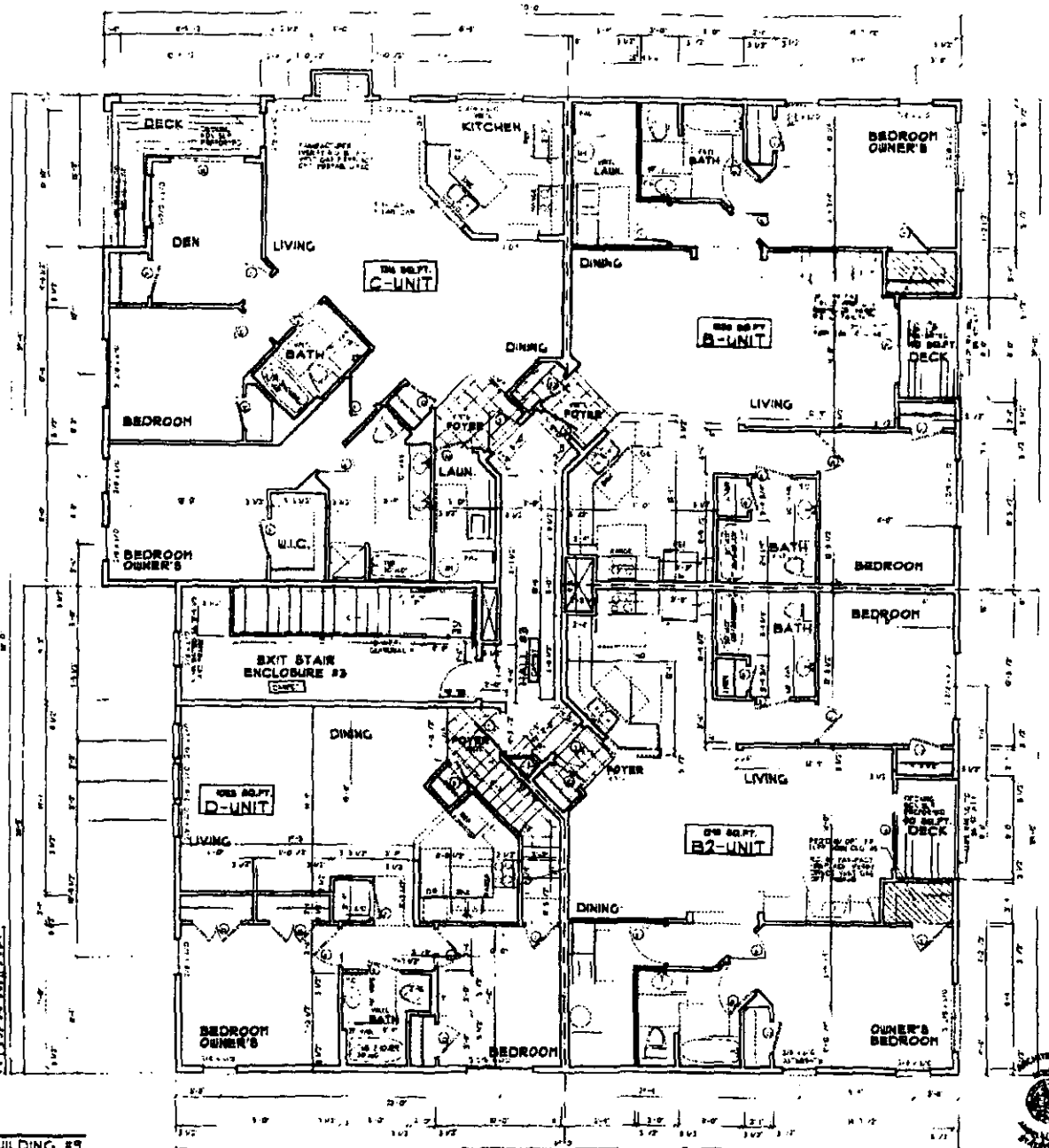
D-UNIT - SCHEMATIC  
FINISHED AREA LAYOUT

PARTIAL PLAN AT 'D' UNIT  
LOFT LAYOUT

THIRD FLOOR PLAN

14-00000

**BUILDING #9**



**Deveraux & Associates**

MANOR HOMES  
THE BOZZUTO GROUP

**A-3**

cCa

Clarksburg Civic Association  
P.O. Box 325  
Clarksburg, Maryland 20871-0325

February 22, 2005

Steven Silverman  
President, Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20850

Honorable Council President Steven Silverman:

The Council and county agencies need to act on several fronts to assure that we remedy a couple of **major obstructions to emergency response in Clarksburg that could result in fatalities.**

1. Fire Marshall Chief Michael Love, has expressed his concern that, in a test, a **fire engine ladder truck could not negotiate the roads in the new Clarksburg Town Center neighborhood.** Chief Mark Davis has said that painting fire lanes and bringing appropriate apparatus, such as longer fire hoses, would be necessary. The Hyattstown Volunteer Fire Department has been alerting us that the new roads are too narrow!

ACTION ITEMS: The council needs to provide oversight in the following:

- Immediately remedy the current situation.
  - Paint the fire lanes and widen roads where possible.
  - Strictly, enforce no parking in fire lanes.
  - Remedy any parking shortages created by having fire lanes in the Town Center.
  - **Additionally, make haste in installing a temporary fire station in Clarksburg as Chiefs Love and Davis suggest.**
- Quickly put plans into effect to assure that inaccessible areas are not allowed again. For example, F&RS could be empowered to analyze and approve or disapprove every development plan that comes to the planning board, based on ability for their best equipment to reach every site in the development. Having a long fire hose is not an adequate substitute for getting a fire engine ladder truck to the site, nor is driving off road an adequate substitute.

**2. Road closures, especially simultaneous ones, are lengthening response time to our new dense neighborhoods to an extreme - beyond 12-minute response.**

Four roads namely, Clarksburg, Stringtown, Piedmont and Skylark serve the area of Clarksburg currently undergoing the most intensive growth. These roads provide access to either Maryland Route 27 or 355 for the residents of Clarksburg and conversely the means by which county services, including fire and police, use to get to those same people. Some spots in this area are already at about the 12-minute response time for the Germantown, Damascus, and Hyattstown fire departments.

In most cases, the closing of any road creates a surmountable obstacle that fire departments are accustomed to overcoming. All of these roads are slated to be closed in 2005. It seems that they might have all been closed simultaneously if a Clarksburg resident hadn't brought that to the county's attention. As it is, the part of Piedmont Road, that connects Stringtown to Clarksburg Road, remains closed for one year beyond its scheduled closure. Skylark is about to close, for six months we hear. Stringtown was scheduled for closure in summer of 2005. Clarksburg Road would be partially closed by this summer, also.



ACTION ITEMS: The council needs to provide oversight in the following:

- Immediately allow F&RS, with citizen interaction, to control the timing of these particular road closings.
- Allow F&RS input, and weigh their input heavily, in the planning process from master plan conception, through setting staging triggers, through pre-preliminary development plans, through site plan, and through construction.
- **Build roads adequate to handle construction of any further developments, even if this means a moratorium on housing construction until the roads are built. Similarly the staging of the construction must become smarter, so that only houses near adequate roads are built first. Use and occupancy permits should not be issued until the infrastructure is safe.**
- Coordinate the activities of the various agencies.

In addition to the specific actions above, here are additional related observations:

- We commend the actions and responsiveness of the F&RS and Hyattstown Volunteer Fire Department. They have been most responsive to the concerns of our residents.
- In dealing with other governmental agencies, residents have had an extremely difficult task in determining which agency was responsible for the timing of the road closings. We understand there has been a committee formed, the Clarksburg Development Work Group, with primary representatives from each of the supporting agencies representing this area, to deal with the problems related to growth. We have also heard of a new position to handle coordination of construction activities in Clarksburg. We approve of these measures, but neither we, nor the Council, should think this alone will solve everything.
- Montgomery County Council should raise its oversight of coordination of agencies, and to listen closely to feedback from citizens, the Clarksburg Civic Association, and the upcounty liaisons.

Sincerely,

Paul E. Majewski, President, Clarksburg Civic Association

Kathie Hulley, CCA Planning Committee Chair

Original mailed USPS.

cc by e-mail to:

County Council  
[county.council@montgomerycountymd.gov](mailto:county.council@montgomerycountymd.gov)

Robert C. Hubbard, Director, Permitting Services  
[robert.hubbard@montgomerycountymd.gov](mailto:robert.hubbard@montgomerycountymd.gov)

Pat Bradley, Director, DPWT

Director.dpwt@montgomerycountymd.gov

Chief Mark Davis, DFRS  
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Chief Michael Love, DFRS  
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leroy.anderson@montgomerycountymd.gov

Jean B. Cryor, State Delegate, jean\_cryor@house.state.md.us

Derick Berlage, Planning Board Chairman, mcp-chairman@mncppc-mc.org

Douglas Duncan, County Executive, ocemail@montgomerycountymd.gov ,  
Douglas.Duncan@montgomerycountymd.gov

Councilmember Michael Knapp, Councilmember.Knapp@montgomerycountymd.gov

Councilmember Nancy Floreen, councilmember.floreen@montgomerycountymd.gov

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Councilmember George Leventhal, Councilmember.Leventhal@montgomerycountymd.gov

Councilmember Phil Andrews, councilmember.Andrews@montgomerycountymd.gov

Councilmember Tom Perez, Councilmember.Perez@montgomerycountymd.gov

Councilmember Howard Denis, Councilmember.Denis@montgomerycountymd.gov

Councilmember Marilyn Praisner, councilmember.Praisner@montgomerycountymd.gov

Councilmember Steve Silverman, Councilmember.Silverman@montgomerycountymd.gov

## Witthans, Wynn

**From:** Shiley, Kimberly A [KShiley@psc.gov]  
**Sent:** Thursday, February 17, 2005 5:14 PM  
**To:** Witthans, Wynn; Krasnow, Rose; Ma, Michael; Synergiesinc@aol.com; 'smithcar@mail.nih.gov'; 'mcp-chairman@mncppc-mc.org'  
**Cc:** 'lpowell@cpja.com'; 'cwagner@bozzuto.com'  
**Subject:** Condominium Architectural Elevations

Hi Wynn,

Thank you for your phone call yesterday regarding my email inquiry (attached). After speaking with you, I immediately called you again, leaving a message on your phone, and stated that I felt it is necessary for me (on behalf of the CTCAC) to obtain the requested elevations from within the departments of M-NCPPC. To re-cap the conversation we did have, you stated that:

- architectural elevations are not required to be submitted by the builders to you for site plan approval.
- that you may have the Bozzutto building elevations, but would have to check on them and their whereabouts, and
- that you definitely did not have the Craftstar 2 over 2 architectural elevations.

Your suggestion to me was to obtain the elevations from the builder, Bozzutto myself. This leaves me confused and frustrated, as M-NCPPC is a tax-payer funded governmental entity that is supposed to serve the County's residents and communities. It does not seem appropriate for me to be directed to contact the individual private entities, the builders, for such information.

Can you suggest a more appropriate way for me to receive the information we need relative to the elevation drawings? If you do have these on file, requesting them from the builders as part of the site plan review process or on our behalf, I would be appreciative of your assistance in making such copies available to the CTCAC.

Kim Shiley  
on behalf of CTCAC

-----Original Message-----

**From:** Shiley, Kimberly A  
**Sent:** Thursday, February 17, 2005 5:09 PM  
**To:** Shiley, Kimberly A  
**Subject:** FW: Elevations

-----Original Message-----

**From:** Shiley, Kimberly A  
**Sent:** Tuesday, February 15, 2005 8:56 AM  
**To:** 'wynn.witthans@mncppc-mc.org'  
**Cc:** 'michael.ma@mncppc-mc.org'; 'rose.krasnow@mncppc-mc.org'; 'Synergiesinc@aol.com'; 'smithcar@mail.nih.gov'  
**Subject:** Elevations

Hi Wynn

Les Powell tells us that all elevations are submitted to Park and Planning during Site Plan submission. The CTCAC is requesting copies of all elevations relative to the Bozzutto Condominiums (Buildings 1, 2, 3, 4 (all Phase 1B-3), 5, and 6 (both Phase 2A)) and the Craftstar 2 over 2 Condominiums (Parcels B and N in Phase 2B and Parcels B, Blk M and Blk L, both Phase 2C). If we need to contact another party, please advise. We are requesting to receive these elevations prior to the 24th of February.

8/3/2005

Thank you for your assistance.  
Kim Shiley  
for CTCAC

p.s. also, if you are aware of the date for the threshold hearing, please advise. thank you again.

8/3/2005

**Witthans, Wynn**

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**Sent:** Thursday, February 17, 2005 5:14 PM  
**To:** Witthans, Wynn; Krasnow, Rose; Ma, Michael; Synergiesinc@aol.com; 'smithcar@mail.nih.gov'; 'mcp-chairman@mncppc-mc.org'  
**Cc:** 'lpowell@cpja.com'; 'cwagner@bozzuto.com'  
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8/3/2005

			"necessary elements" of development for Clarksburg Town Center.
Preliminary Plan	Planning Board Approved – March 26, 1996	<p>Background: "...the underlying development authority, Project Plan #9-94004, was approved by the planning board on May 11, 1995, after two prior planning board meetings (held on April 6 and 20, 1995). The record for the preliminary plan #1-95042 specifically includes the records from those prior hearings...</p> <p>Therefore, the planning board approves the plan. The approval is subject to the following conditions:</p> <p>... #14. "Preliminary plan #1-95042 is expressly tied to and interdependent upon the continued validity of Project Plan #9-94004. <b>Each term, condition and requirement set forth in the Preliminary Plan and Project Plan are determined by the Planning Board to be essential components of the approved plans and are therefore not automatically severable.</b>"</p>	<p>The Planning Board itself determined all conditions, findings, or "requirements", as outlined in the Project Plan to be "essential components" of the approved plans and "NOT automatically severable." Therefore, the data sheet containing height definitions of 45' for residential and 50' for commercial can neither be ignored at Site Plan approval, nor arbitrarily over-ridden by any member of the M-NCPPC staff or by the developer. (See definition of "Minor Amendment" under Zoning Ordinance #59... Removing the height definitions would NOT be considered a Minor Amendment – i.e. not allowable without amendment hearing.)</p>
Montgomery County Zoning Ordinance #59	Various dates of acceptance/ amendment	<p>59-C-10.2 Methods of Development 2. Optional Method of Development –</p> <p>Under this method, general commercial uses and higher density residential uses are allowed in the RMX zone provided they are in accordance with the provisions of Section 59-C-10.3 as well as the density, <i>numerical limitations</i> and other guidelines contained in the applicable Master Plan approved by the district Council. In addition, a Project Plan and Site Plan must be approved by the Planning Board.</p> <p>59-C-10.3 Optional Method of Development Regulations –</p> <p>This optional method of development accommodates mixed use development comprised of planned retail centers and residential uses at appropriate locations in the County. <i>This method of development is a means to encourage development in accordance with the recommendations and guidelines of approved and adopted Master</i></p>	<p>The Optional Method of Development, is the option under which CTC is zoned for RMX2 development. This option explicitly requires adherence to the Master Plan/Project Plan and Site Plans in accordance with the Project Plan.</p> <p>According to 59-C-10.2, #2, under the Optional Method of Development, the commercial uses and higher density residential uses are allowed only provided that they are in accordance with "<i>numerical limitations</i>" and guidelines of the plans approved.</p> <p>59-C-10.3 states that the Optional Method of Development is a "means to encourage development in accordance with" recommended guidelines. (Clearly shows the intent to regulate development under "Optional Method" vs. leaving development open to interpretation under general</p>

		<p><i>Plans.</i> Approval of this optional method of development is dependent upon the provision of certain public facilities and amenities by the developer. The requirement for public facilities and amenities is essential to support the mixture of uses at the increased densities of development allowed in this zone.</p> <p>59-C-10.3 Optional Method of Development Regulations – This optional method of development accommodates mixed use development comprised of planned retail centers and residential uses at appropriate locations in the County...</p> <p>59-C-10.3.11 Development Procedure – A. The procedure for approval for an <i>optional method of development in these zones requires a Project Plan in accordance with division 59-D-2 and a site plan in accordance with division 59-D-3.</i></p> <p>59-D-A-2 – Optional Method requires a <b>Project Plan</b> and Site Plan ... <b>precondition</b> for the use of the optional method of development</p> <p>59-D-3-23 – Proposed Development – ... (Referencing what must be included within the site plan) ... (a) The location, <b>height</b>, ground coverage and use of all structures.</p> <p>59-D-3.4 – Action by Planning Board (1) ...the Site Plan is <i>consistent with an approved development plan or a Project Plan for the Optional Method of development</i>, if required... (4) ...each structure and use <i>is compatible with other uses and other site plans and with existing and proposed adjacent development.</i></p> <p>59-D-2.6 Amendment: Minor Plan Amendment A minor amendment is an amendment or revision to a plan or any findings, conclusions, or</p>	<p>RMX2 requirements.) Once again, it is apparent that this is why a data sheet denoting the guidelines for development of CTC, including specific height parameters, was included within the Project Plan and subsequently adopted by the Planning Board.</p> <p>Under the Optional Method of development within RMX2 zoning, the Project Plan is an authoritative document. This is explicit under 59-C-10.3.11, as is the requirement for a site plan in accordance with 59-D-3 – requiring that "height" and use of all structures must be noted. As "4 stories" is merely a standard for RMX2 in <i>general</i>, and the approved Project Plan included a data sheet with <i>specific</i> height parameters, under the Optional Method of Development (according to 59-C-10.3.11, 59-D-A-2, and 59-D-3-23) the heights for any structures within a site plan must be in accordance with height definitions/limitations outlined and approved within the Project Plan Findings.</p> <p>(It is clear that the change in height within Wynn Witthan's documentation does not constitute a Minor Amendment, according to 59-D-2.6. Even if</p>
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		<p>conditions associated with the plan <i>that does not entail matters that are fundamental determinations assigned to the Planning Board.</i> A minor amendment is an amendment that <i>does not alter</i> the intent, objectives, or <i>requirements expressed or imposed by the Planning Board</i> in its review of the Plan. A minor amendment may be approved, in writing, by the Planning Board staff. Such amendments are deemed to be administrative in nature and concern only matters that are not in conflict with the Board's prior action.</p> <p>59-D-3.6 Failure to Comply If the Planning Board finds for any plan approved under this section on its own motion or after a complaint is filed with the Planning Board or the department that any of the terms, conditions or restrictions upon which the site plan was approved are not being complied with, the Planning Board after due notice to all parties concerned, and a hearing, may revoke its approval of the site plan or approve a plan of compliance which would permit the applicant to take corrective action to comply with the site plan... The Planning Board may revoke its approval of the site plan or take other action necessary to ensure compliance, including imposing civil fines, penalties, stop work orders and corrective orders under Chapter 50... Upon decision by the Planning Board to revoke approval of a site plan, any applicable building permits and use and occupancy permits issued pursuant to a prior Planning Board approval are hereby declared invalid.</p>	<p>Wynn were to position this as a "Minor Amendment" there is no documentation – i.e. approval "in writing by the Planning Board staff" to support that as a deliberate action by the Planning Board staff.)</p> <p>If the site plan, as confirmed by M-NCPPC staff members (Michael Ma, Wynn Witthans, Rose Krasnow), merely showed "4 stories" as the height notation for the buildings in question, even as approved by the Planning Board, it still does not authorize those "4 stories" to exceed the height limitations as defined within the Project Plan findings and approved by the Planning Board. Under the "Optional Method of Development" the Developer is still obligated to ensure that the "4 stories" comply with the conditions and findings of the Project Plan. The Planning Board is also obligated to enforce those conditions and findings.</p>
Site Plan Review (Wynn Witthans' - Staff Report submission & Planning Board Opinion)	Planning Board Opinion - January 22, 1998	<p>Site Plan Review: Staff Recommendation; Proposal</p> <p>Findings for Site Plan review (Page 35):            "#1 Site Plan is consistent with the Project Plan approved for this site utilizing the RMX2 optional method of development. (See discussion above.)            #2 The Site Plan meets all of the</p>	<p>This is the excerpt from the Staff Report prepared by Wynn Witthans and presented to the Board for approval of the Phase 1 Site Plan.</p> <p>"Within Wynn's Staff Opinion, submitted as part of the site plan review documentation for the Board, is a data table that varies from the data table included in</p>



		<p>requirements of the zone in which it is located. (See project data table* above.)"</p> <p>Planning Board Opinion:</p> <p>"Based on the testimony and evidence presented and on the staff report, which is made a part hereof, the Montgomery County Planning Board finds:</p> <p>#1. The site plan is consistent with the approved development plan or a Project Plan for the Optional Method of Development, if required.</p> <p>#2 The site plan meets all the requirements of the zone in which it was located."</p>	<p>the approved Project Plan (as part of the "Findings" deemed by the Board to be "essential" components of the Project Plan). The data table that Wynn submitted with her Staff Opinion appears to have been re-written to show a generic "4 stories" denotation for building heights, omitting the specifications of "45' for residential" and "50' for commercial." The first and only appearance of this altered data table among M-NCPPC documentation is within Wynn's Staff Opinion/Site Plan Review. In submitting a new data table, Wynn has independently overridden Community Based Planning's recommendations, as well as the "Findings" approved by the Planning Board in the final Project Plan. Her submission to the Planning Board could be viewed as misleading and negligent, at best. At worst, it could be viewed as a deliberate alteration or omission of specifications, inappropriately serving the developer's desires.</p> <p>Again, as stated within our Zoning Ordinance notes, even in the presence of a generic "4 stories" denotation on the altered data table and/or the submitted Site Plan, the Developer is still accountable to ensure that the "4 stories" are in compliance with the height restrictions of the approved data table/findings as part of the approved Project Plan. Also, according to zoning ordinance for Optional Method, and the Planning Board's own Findings M-NCPPC is still accountable to enforce the limitations/ guidelines contained within the approved Project Plan Findings. There is no language within the Site Plan Review Staff Report or the Board Opinion that negates the Data Table ("Finding") of the Project Plan -- i.e. that the "4 stories" shown on the Site Plan must be in compliance with the heights as defined -- 45' for residential buildings and 50' for commercial</p>
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			buildings.
Site Plan Enforcement Agreement	Montgomery County Planning Board, Linnowes & Blocher, LLP (legal counsel for the Developer) & Piedmont Land Associates (Developer) March 18, 1999	<p>(Page 1)</p> <p>"Whereas, Text Amendment No. 80025, approved July 21, 1981, effective October 15, 1981, amended Section 59-D-3.3 of the Montgomery County Code to require as part of the site plan review process that <i>applicants enter into a formal agreement with the Planning Board requiring the applicant to execute all features of the approved site plan in accordance with the Development Program required by Section 59-D-3.23 of the Montgomery County Code...</i>"</p> <p>"Whereas, the parties hereto desire to set forth herein their respective requirements and obligations pursuant to Section 59-D-3.3 of the Montgomery County Code, 1994... Now, therefore, in consideration of the mutual promises and stipulations set forth herein and pursuant to the requirements of Section 59-D-3.3 of the Montgomery County Code, 1994.... the parties hereto agree as follows:</p> <p>1. In accordance with approval by the Planning Board of Site Plan No. 8-98001, <i>Developer agrees that, when it commences construction on any phase as set forth in the Development Program attached hereto as Exhibit "B", or any amendments thereto, it will execute and maintain all the features of the site plan for that phase as required by Section 59-D-3.23 in fulfillment of the approval granting Site Plan No. 8-98001, and any subsequent amendments approved by the Planning Board....</i></p>	The Developer and its legal counsel were aware of the conditions for development of RMX2 under the "Optional Method" of development. The Project Plan (including all conditions and findings) is the recognized and underlying authority. 59-D-3 requires height specification, as well as assurance that buildings are consistent with the approved Project Plan.

**Witthans, Wynn**

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**From:** Synergiesinc@aol.com  
**Sent:** Thursday, December 23, 2004 11:16 AM  
**To:** kambrose@newlandcommunities.com  
**Cc:** smithc@efdb.nci.nih.gov; davidkitchens@coopercarry.com; trodriguez@parkerrodriguez.com; rcroteau@newlandcommunities.com; shileyk@mail.nih.gov; nnagde@ENERGENconsulting.com; jersub13@yahoo.com; rdefrehn@nccmp.org; timdearros@comcast.net; Lfantle@aol.com; carlandjeff@comcast.net; murfs@comcast.net; JJackman@wtplaw.com; sendtriciamessages@msn.com; Carter, John; Maskal, Nellie; Ma, Michael; Witthans, Wynn; Edwards, Sue; Krasnow, Rose; tbrown@linowes-law.com; Councilmember.Knapp@MontgomeryCountyMD.gov; catherine.matthews@montgomerycountymd.gov; nancy.hislop@montgomerycountymd.gov; Berlage, Derick; Coleman, Joyce  
**Subject:** December 8th Meeting - Follow-up

Hello, Kim.

The CTCAC met on December 13th to review the new retail site concept as presented by Newland on December 8th. All were pleased with the direction Newland is taking relative to the overall design, yet we still have some outstanding concerns.

Understanding your desire to move quickly towards a site plan hearing, we did not want to wait until after the holidays to submit our comments to you. The attached letter outlines our comments regarding the new concept. We will await your response as to a follow-up meeting or other appropriate next steps.

In the interim, we wish you a Merry Christmas/Happy Holidays.

Sincerely,

Amy Presley  
301-916-7969 (office)  
301-526-7435 (mobile)

8/3/2005

## **CLARKSBURG TOWN CENTER ADVISORY COMMITTEE**

Kim Shiley, CTCAC Co-Chair

Carol Smith, CTCAC Co-Chair

Amy Presley, CTCAC Spokesperson

December 21, 2004

Ms. Kim Ambrose  
Vice President, Operations  
Newland Communities  
8201 Greensboro Drive  
Suite 817  
McLean, Virginia 22102

Dear Kim:

First, we want to thank you and your team for meeting with us on December 8<sup>th</sup> to present the revised concepts for the CTC Town Square and retail area. The design presented addressed several of our concerns relative to pedestrian-orientation, the potential grading issues with the previous plan, and the placement of the library relative to use of the Town Square green space. We found the new design to be visually attractive and we are appreciative of the beautiful work done by Trini and David. However, we feel strongly that appropriate form *and* function are critical to the success of the Town Square/Retail area and fulfillment of the Master Plan/Project Plan intent.

We presented and discussed the design with the CTCAC on December 14<sup>th</sup> and are in full agreement regarding our assessment of the new design. We find the following to be the positive aspects of the design:

- **Overall Design**
  - o The new design is visually interesting and, dependent upon proper execution of architectural detail, will create a pleasant and inviting Town Square and pedestrian-oriented Retail area
  - o The new design provides for safe pedestrian traffic and gathering areas.
- **Library**
  - o The new location establishes the library as a "significant" building, as appropriate according to the Master Plan/Project plan.
  - o The planned architecture, with two stories and open loft "reading room," will provide visual interest and increased functionality.
  - o The library will serve as a linkage to the Town Square green space and enable better usage of the Town Square area.
- **Grocery Store**
  - o The new location of the grocery store provides for decreased visibility of the truck loading area and addresses pedestrian safety relative to truck deliveries, by avoiding residential and pedestrian pathways.

Regarding functionality, specifically with respect to the Master Plan/Project Plan vision and guidelines for the Town Square retail area, there are several issues of great concern still outstanding with the new design. We find the following issues to be of most significant concern:

- **Reduction of Retail/Office Space**
  - o The reduction of retail and office space in the new design to 116,500 sq. ft. of retail and 6,000 sq. ft. of office space is unacceptable, as it will not adequately provide for the mix of uses envisioned in the Master Plan/Project Plan as necessary to "create a lively and diverse place" (p. 44) and "create a Town Center which will be a strong central focus for the entire study area" (p. 42).

- *Note: The Master Plan/Project Plan allowed for and encouraged a total of 250,000 square feet of retail and office space (150,000 sq. ft. retail; 100,000 sq. ft. office). These guidelines were established under the special RMX2 zoning with the intent of creating a self-sustaining, pedestrian-oriented Town Center that would serve the community and study area long term.*
- The new design includes two pad sites (adjacent to the retail area and parallel with Overlook Park Drive) that neither foster pedestrian access as well as they could, nor provide for the optimum sq. ft. retail and office space allowable under the Project Plan to serve the community. While pad sites are lucrative for the retail developer (in that the retailer, vs. the developer, is responsible for construction of the building), they do not best serve the community. These pad sites and the available space would better serve the community if connected to the building on Overlook Park Drive and Clarksburg Town Square Drive and if designed as two stories to maximize square footage.
  - *Note: The pad sites could become one contiguous retail area and could have a second floor added. If the sites were joined to the other building on Overlook Park Drive, also built with two stories instead of one, it would encourage pedestrian traffic on the Overlook Park side and allow for potential back-to-back retailers to fill the space, as well as providing for supplemental office space above.*
- The new design also includes a freestanding pad site (between the bank and grocery store) that Newland presented to us as a restaurant for gathering and dining ("with great views of the park area, etc.). However, only a total of 5,000 sq. ft. is planned for this site. This footprint will not accommodate anything larger in scale than a "Panera." It does not provide for a larger restaurant that would accommodate the community with a "dining" establishment vs. an upscale fast-food establishment. We suggest increasing the size of this building to a minimum of 9,000 sq. ft.
  - *Note: The types of retail planned will have a dramatic impact on the community and the success of the pedestrian-orientated Town Center goal of the Master Plan. If there are no spaces that will accommodate the mix of retail/dining establishments to support a pedestrian and destination draw, this will impact negatively on the community long term.*
- **Grocery Store**
  - The grocery store in the new design has a footprint of 63,000 sq. ft. This accounts for more than half of the total retail area planned, leaving a balance of only 53,500 sq. ft. for other retail establishments. We find, and are supported by county officials, that the planned grocery store is too large for the scale of the community and should be reduced to allow for other retail and/or entertainment space (as encouraged by the Master Plan to create a unique and lively focus).
    - *Notes:*
      1. *The footprint of the grocery store (Giant) at Kentlands is 60,854 sq. ft. We do not need a grocer of that size to support this area. If so, then we also need retail proportionate to that of the Kentlands.*
      2. *If the grocery store is intended as the sole anchor to achieve a destination center draw, competition with the Cabin Branch and Clarksburg Village retail areas and grocer (to be built soon after Clarksburg Town Center) should be considered. Thought and commitment must be given to creating a unique draw to the Town Square/Retail center – such as the addition of entertainment space (movie cinema cafes/theater, etc.) -- not merely a large grocery store. Again, "create a Town Center which will be a strong, central focus for the entire study area".*
- **Mix of Retail/Office Space**
  - As noted, we find an appropriate mix of retail and office space to be critical to supporting the Master Plan/Project Plan vision for Clarksburg Town Center. Based

on the plan presented we do not see an appropriate allocation of retail/office space to accommodate the mix of uses envisioned. We would like assurance from Newland that an adequate mix of retail establishments (including dining, entertainment and other strategically selected retailers/boutiques) will be planned for and included in the Town Center retail area.

▪ Notes:

1. *We believe that the reduction of retail space, increase of grocery store space, and insistence on pad site locations/sizes is being driven by Newland's contract with the retail developer (Regency) vs. the intent to develop the type of Town Center envisioned for the community in accordance with the Master Plan/Project Plan.*

2. *We would like written assurances from Newland that the retail developer ultimately contracted will have the sensitivity necessary to develop the retail area in accordance with the Master Plan/Project Plan vision, vs. merely from a "cookie-cutter"/"strip center"/profit only motive.*

- **Planned Residential**

- o The addition of residential units within the retail area of the Town Square is not in accordance with the Master Plan/Project Plan and reduces the amount of office/retail space available.

We suggest eliminating the residential units and/or reducing the residential units to provide for office space (2<sup>nd</sup> floor) above retail (1<sup>st</sup> floor) along Clarksburg Square Drive and General Store Drive.

- **West Side/Residential Site Plan**

- o On initial review of the West Side residential site plan shown to CTCAC at the December 8<sup>th</sup> meeting, we believe that the revisions to the plan are positive. However, we are still concerned with the cohesiveness of the West Side of the Town Square area with the Retail side. Therefore, we cannot give our full support of it until we can view the site plan in conjunction with the revised Retail area site plan.

Adherence to the Master Plan and Project Plan Guidelines, especially with respect to the intended functionality of the Town Square area, is of vital importance to us as a community. We appreciate the progress Newland has made to date towards fulfilling the Master Plan/Project Plan vision. However, as a community, we cannot support the most recent design presented to us without first having our remaining concerns addressed. We believe that another meeting with you, followed by some appropriate revisions to the plan presented, would bring us nearer to that point of support of the conceptual design.

The CTCAC would be available to meet during the second week in January to review these concerns in detail and discuss appropriate revisions to the plan. Please contact us to let us know a convenient time to get together with your team.

Sincerely,

Kim Shiley, CTCAC  
Carol Smith, CTCAC  
Amy Presley, CTCAC  
on behalf of CTCAC and Residents

Cc: Wynn Witthans, MNCPPC  
Michael Ma, MNCPPC  
Rose Krasnow, MNCPPC  
Sue Edwards, MNCPPC  
John Carter, MNCPPC  
Todd Brown, Linowes & Blocher  
Rick Croteau, Newland Communities

## Witthans, Wynn

---

**From:** Synergiesinc@aol.com  
**Sent:** Tuesday, December 21, 2004 11:18 AM  
**To:** Krasnow, Rose  
**Cc:** Carter, John; Ma, Michael; Witthans, Wynn; susan.edwards@mncppc-mc.org;  
councilmember.knapp@montgomerycountymd.gov;  
catherine.matthews@montgomerycountymd.gov; nancy.hislop@montgomerycountymd.gov;  
Berlage, Derick; Coleman, Joyce; nnagda@ENERGENconsulting.com; smithcar@mail.nih.gov;  
Shileykim@aol.com  
**Subject:** Fwd: Follow-up

Hello Rose and all.

We have not yet heard back from you regarding the height violation issues and are wondering whether MNCPPC intends to issue a violation notice to Newland. The CTCAC would greatly appreciate a written response before the end of this week.

Thank you for your assistance in this matter.

Regards,  
Amy Presley  
on behalf of the CTCAC

8/3/2005

## Witthans, Wynn

**From:** Synergiesinc@aol.com  
**Sent:** Tuesday, December 14, 2004 11:11 AM  
**To:** Carter, John  
**Cc:** Ma, Michael; Witthans, Wynn; susan.edwards@mncppc-mc.org; Krasnow, Rose; councilmember.knapp@montgomerycountymd.gov; catherine.matthews@montgomerycountymd.gov; nancy.hislop@montgomerycountymd.gov; Berlage, Derick; Coleman, Joyce; nnagda@ENERGENconsulting.com; smithcar@mail.nih.gov; Shileykim@aol.com  
**Subject:** Follow-up

Hello, John, Rose, Michale, Wynn, and Susan.

First, I want to thank you for meeting with us yesterday. Kim, Carol, Niren and I greatly appreciate your time and assistance in our attempts to ensure that Clarksburg Town Center is developed according to the vision and intent of the Master Plan, and in compliance with the Project Plan guidelines. On behalf of our entire CTCAC, we thank you for your efforts to date.

As we mentioned, we have the utmost respect for the work that was done by Community Based Planning, together with the Clarksburg Civic Association, the Historical Society, and all other contributors, to develop the Master Plan vision and the subsequent Project Plan guidelines to uphold that vision throughout the development process.

With regard to the height violation evident in the existing Bozutto condominium, and height violations of additional residences planned but not yet built, we are gravely concerned. As discussed yesterday, violations must be called out by MNCPPC as violations. Otherwise, the entire validity of the Project Plan process is nullified. It is not appropriate to enable developers to arbitrarily deviate from Project Plan conditions and findings...especially in an RMX2 project under "optional method of development" where such conditions and findings are "expressly tied to" and "not automatically severable" from the Project Plan, without remanding the entire Project Plan back to the Board for consideration. There is a proper process for the Board to review and address such developer desires in a hearing *prior* to the construction of structures which clearly violate terms and conditions of the Project Plan.

We do not believe that the height violation issue(s) can be properly addressed during the January hearing for supplemental amendments desired by the developer. As stated yesterday, we would expect MNCPPC to issue a violation to the developer and establish a Board hearing specifically on this issue.

As stated by Michael Ma, and confirmed by Wynn Witthans, the site plan(s) for the Bozutto condominiums as well as the 2/2's, did not contain specific height measurements - they merely stated "four stories." Therefore, we do not believe that MNCPPC is responsible for the violations. With a designation of "four stories" it would be expected that the site plan would be approved under the current Project Plan. The oneness is upon the developer to ensure that builders of those "four stories" comply with the heights specified in the Project Plan. The developer is clearly accountable and responsible for compliance with all conditions and findings of the Project Plan. It is evident that the developer was aware of the 45' height limitation for residential structures, and, under the "Site Plan Enforcement Agreement," takes full responsibility for development in accordance with that limitation.

We cannot sit idly by while developers change Project Plans at whim, according to market drivers. We appreciate your help in ensuring the sanctity of the Master Plan/Project Plan process.

We will await your response regarding issuance of a violation notice to the developer. Again, thank you for your time and assistance.

Sincerely,  
Amy Presley (on behalf of the CTCAC)

8/3/2005



message

## Witthans, Wynn

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**From:** Matthews, Catherine [Catherine.Matthews@montgomerycountymd.gov]  
**Sent:** Friday, December 10, 2004 3:26 PM  
**To:** NORLAND, BARBARA; Gondhalekar, Shri; Omidvar, Hamid; Leck, Gregory; Hislop, Nancy; Wolanin, Emil; Riese, Jeffrey; Navid, Sarah; Witthans, Wynn; Edwards, Sue  
**Cc:** Henderson, Harriet; Knapp, Mike  
**Subject:** Update - Clarksburg Library and Town Center design

Folks,

FYI -- Attached is a summary from recent meetings on the library project in the Clarksburg Town Center.

### ***Catherine Matthews***

Director

Upcounty Regional Services Center  
12900 Middlebrook Road, Suite 1000  
Germantown MD 20874  
240-777-8000 /240-777-8002 TDD

**NEW** [catherine.matthews@montgomerycountymd.gov](mailto:catherine.matthews@montgomerycountymd.gov)

*...bringing the County closer to you!*

**File Update: Clarksburg Town Center**

12/10/04

December 2, 2004

Upcounty Regional Services Center (URSC) staff met with representatives from Newland Communities, the Department of Public Libraries, the Capital Development & Design Division of the Department of Public Works & Transportation, and Planning Board staff to discuss changes that had been requested in the Clarksburg Town Center plan pertaining to the proposed library and the issues of parking, and access for both pedestrians and trucks. Revised drawings showed the relocation of the library from the "island" parcel to a prominent corner of the planned retail section. Parking for library employees and patrons was also addressed.

It was decided that all would forward specific comments on this revision to Cathy Matthews, URSC, who would forward them to Newland Communities representatives. Planning Board staff would solicit comments from the Traffic Engineering Division of DPWT. All comments received are noted here for your records.

*Greg Leck, Traffic Engineering/DPWT -*

Our comments are limited to the public transportation engineering-related elements of that proposal.

We conditionally support the concept plan as proposed. Moving the library site out of the "oval" is a big improvement over earlier iterations.

We ask that staff from the Department of Public Libraries and the DPWT Division of Capital Development/Design Section consult on the design of the library building – in particular, the location and design of off-street loading spaces for library vehicles.

We will comment on the location and design of the driveways (on both sides of the proposed library building) and potential for nearby on-street parking on Clarksburg Square Road upon receipt of more detailed plans.

We are also concerned about the design of the shopping center/truck loading driveway on the southeast side of the plan, due to the sharpness of the nearby horizontal curve. We will need the applicants' consultants to submit sight distances analyses for that entrance. It may be necessary to install signage and/or channelization to limit movements at that driveway to preclude left turns out of that entrance.

*Shri Gondhalekar, Capital Development & Design/DPWT -*

1. County should have air rights over the Via behind the Lib. Bldg.
2. Grades are okay. Entrance may have to be shifted to corner.
3. Rear elevation of the supermarket should be aesthetically pleasant.
4. There should be landscape barrier between the library and the supermarket.
5. Site plan will have to be revised to accommodate loading -unloading and dumpster area.
6. Are the 75 spaces reserved for library and its patrons?
7. DPWT – Traffic comments should be reviewed and complied with.

December 8, 2004

Representatives from Newland Communities met with the Clarksburg Town Center Advisory Committee to discuss the latest revisions. Committee members were somewhat pleased with the revisions, but still had the following concerns.

1. Eliminate the additional residential units above the retail section.
2. Some building heights are not in concert with the master plan.
3. More office space is needed along with types of retail that will identify the town center more as a destination, not just where the grocery store and some fast food retail are located.

The Clarksburg Town Center Advisory Committee is very supportive of the relocation of the library and hope that its design will be consistent with the neo-traditional flavor intended for the rest of the town center.

They have asked for the County's support to ensure that elements of the master plan that served as attractions for many new residents in the Clarksburg Town Center would come to fruition. I strongly recommended that she and other Clarksburg residents participate in future public hearings to make their wishes known.

Next steps for the developer:

1. Amend the project plan (with Developmental Review, M-NCPPC).
2. Modify the site plan drawings to reflect approved amendments.
3. File site plan changes with Planning Board.
4. Prepare for Planning Board public hearing on the revised project plan and site plan. (Public hearing is expected in early spring 2005).

Next steps for County:

1. The Upcounty Regional Services Center will re-convene a meeting, if necessary, to discuss the revisions/amendments once those changes are reviewed by the DPWT and Public Libraries.

*Prepared by URSC*

## Witthans, Wynn

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**From:** Shiley, Kimberly (NIH/NCI) [shileyk@mail.nih.gov]  
**Sent:** Thursday, December 09, 2004 6:56 AM  
**To:** Coleman, Joyce  
**Cc:** 'synergiesinc@aol.com'; Smith, Carol Leigh (NIH/NCI); 'nnagda@ENERGENconsulting.com'; 'jersub13@yahoo.com'; 'redfrehn@nccmp.org'; 'timdearros@comcast.net'; 'lfantle@aol.com'; 'cariandjeff1@comcast.net'; 'murfs@comcast.net'; 'jjackman@wtplaw.com'; 'sendtriciamessages@msn.com'; Carter, John; Maskal, Nellie; 'michale.ma@mncppc-mc.org'; Witthans, Wynn; 'susan.edwards@mncppc-mc.org'  
**Subject:** Clarksburg Town Center



DerickBerlage12-7-  
07[1].doc

Greetings Ms. Coleman,

Attached please find our letter to Mr. Berlage. We appreciate your assistance in personally delivering this letter to him.

We look forward to hearing from you soon regarding a meeting date and time. You may reach me at (301) 435-5347 or Carol Smith at (301) 435-5215.

Sincerely,  
Kim Shiley

CLARKSBURG TOWN CENTER ADVISORY COMMITTEE  
Clarksburg, MD 20871

December 8, 2004

The Honorable Derick Berlage  
Chairman  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

VIA: Joyce Coleman, Special Assistant

Dear Mr. Berlage:

It is with great interest in upholding the vision and intent of the Clarksburg Town Center Master Plan that we are writing to you. As you may recall, per the letter you received from our group in August, 2004, the CTCAC (Clarksburg Town Center Advisory Committee) was formed in response to the Town Center residents' discovery of deviations by the developer (Newland Communities) to the Master Plan concept and Project Plan Guidelines. The residents elected the CTCAC to represent them in taking action with MNCPPC and the developer to ensure adherence to the vision and intent of the Master Plan.

Since the CTCAC was elected in July, 2004, we have become very active in researching not only the intent of the Master Plan and approved Project Plan, but also the detailed parameters within the Conditions and Findings, as well as the processes within MNCPPC for site plan submission and approval. As part of our process, we have researched and read every document available on file with MNCPPC relative to Clarksburg Town Center. In doing so, we have made ourselves aware of all requirements under the "Optional Method of Development" for the RMX2 zoning and the related requirements for complete compliance with the Conditions and Findings of the approved Project Plan #9-94004 and Preliminary Plan #1-95042.

The CTCAC and residents are in full agreement with the Land Use Objectives of the Clarksburg Master Plan, especially with regard to creating a pedestrian-friendly town center that will serve as the central focus for the entire study area. The CTCAC finds that in order to uphold these objectives, it is imperative for the developer to adhere completely to the Project Plan Guidelines/Conditions and Findings.

We have determined multiple areas in which Newland has departed from the intent and vision of the Master Plan and, more seriously, violated the Project Plan Conditions and Findings. The most pressing issue is Newland's violation of the height restrictions. The approved Project Plan restricts building heights to 4 stories/45' for residential and 4 stories/50' for commercial. The Master Plan and Project Plan clearly state the necessity for ensuring compatibility of scale with the historic district. As confirmed to us by John Carter and Nellie Maskal of Community Based

Planning, and Michael Ma of Development Review, this was a driver for the height limitation of 45' for residential structures.

CTC residents are gravely disturbed that buildings already constructed in Phase 1-B3 of the CTC development (Bozutto condominiums) measure 57', as recently confirmed to CTCAC by MNCPPC Development Review. Newland also confirmed a height in excess of 45', but stated that the building was 53'4". In either case, the structures are not compatible in scale with the historic district. This is a serious violation which requires immediate attention.

In addition to the buildings already constructed in Phase 1-B3, there are also buildings currently under construction within Phase 2B (Craftstar 2/2 Condominiums – Parcels B & N) which also violate the height restrictions, with planned heights of 51'7". Further, there are several other site plans previously approved for Phase 2C which include additional Craftstar 2/2 Condominiums and Bozutto Condominiums with planned heights exceeding the 45' maximum allowable according to the Project Plan Guidelines. Apparently, the site plans for these structures were erroneously approved, and/or the developer did not specify heights on the site plan (beyond "4 stories") and has violated the height restriction without MNCPPC's awareness. The CTC residents are seeking immediate action by MNCPPC to correct this situation before new buildings are constructed.

Ensuring compatibility with the historic nature of Clarksburg, especially in terms of scale as described with the Master and Project Plan, is essential to creating the type of community that was presented to the residents by the developer and builders when we purchased our properties in Clarksburg Town Center. We appreciate the assistance that we have received from MNCPPC to date in this regard. We have scheduled another meeting with Community Based Planning and Development Review for December 13<sup>th</sup> to discuss the specifics relative to the height violations described. However, the CTCAC respectfully requests a meeting with you to discuss our overall concerns.

We would appreciate it if a meeting could be scheduled with you prior to December 17<sup>th</sup>. We will contact Joyce Coleman to arrange the meeting at your convenience.

Sincerely,

Kim Shiley, Co-Chair, CTCAC  
Amy Presley  
Randy DeFrehn  
Joel Richardson  
Niren Nagda  
Lynn Fantle

Carol E. Smith, Co-Chair, CTCAC  
Tim DeArros  
Mark Murphy  
Jen Jackman  
Tricia Larade  
Jeff Lunenfeld

**Witthans, Wynn**

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**From:** Smith, Carol Leigh (NIH/NCI) [smithc@efdb.nci.nih.gov]  
**Sent:** Monday, November 08, 2004 2:49 PM  
**To:** 'kambrose@newlandcommunities.com'  
**Cc:** 'davidkitchens@coopercarry.com'; 'rcroteau@newlandcommunities.com'; 'synergiesinc@aol.com'; Shiley, Kimberly (NIH/NCI); Smith, Carol Leigh (NIH/NCI); nnagde@ENERGENconsulting.com; jersub13@yahoo.com; rdefrehn@nccmp.org; timdearros@comcast.net; Lfantle@aol.com; cariandjeff@comcast.net; murfs@comcast.net; JJackman@wtplaw.com; 'sendtriciamessages@msn.com'; Carter, John; Maskal, Nellie; Ma, Michael; Witthans, Wynn; 'susan.edwards@mncppc-mc.org'  
**Subject:** Response to Options 1 & 3 from Meeting of October 26, 2004

Kim:

We apologize for the extra time it took to get our response back to you in regards to the meeting of October 26, 2004. As you know we speak for a much larger group and we wanted to make sure our response reflected the views of the community. Our response is attached. We are compiling a separate list of concerns as requested by Rick Croteau. Please forward this email and attachment to Rick since we are not sure of his email address.

Carol Smith

8/3/2005

November 8, 2004

Dear Kim:

We are pleased that David Kitchens is working with Newland Communities to offer design possibilities that may bring a resolution to our ongoing concerns. We appreciate that you have shared two of the potential design options with us. The entire CTCAC met on Friday, October 29, 2004 and the consensus is that neither option is satisfactory. Our concern continues to be that the dialogue with you and the designs you have presented to date continue to feature the "big box grocery store" strip shopping center format and the insertion of large residential buildings into the retail/office space. The same concerns that the residents found objectionable when originally presented to them last summer.

We are confident that Mr. Kitchens is capable of designing a retail center that meets the Master Plan objectives and the Project Plan conditions and findings. However, the pre-existing agreements with Regency Centers and their proposed tenants, presumably based on assumptions that a run-of-the-mill strip mall design would be acceptable, has limited both his ability to find a creative solution and the possibilities and options to be considered. We continue to be optimistic that an alternative design for a commercially viable retail center which integrates the urban design objectives described in the Master Plan and a small-town atmosphere can be found. We have included specific suggestions to accomplish that objective.

However, before we offer comments and suggestions on the two design options, we would like to reiterate below the height issues. We await your response and require detailed clarification on the height issues from you.

#### Height Issues

In our meeting of August 26, 2004, the issue of the height of the existing condominiums with reference to the 45' height restriction in the approved Project Plan was raised, as was the height of the proposed two over two townhouse condominiums. Over the last two months, while we have repeatedly asked, we have not received specific answers or architectural drawings that clarify the height issues. We know that such information should be readily available with your architectural and engineering staff and/or subcontractors.

The simple fact that our request has not been met leads us to conclude that there could be a problem. With respect to our serious concern with the height issues we want to stress again that the limits on heights, as approved in the project plan and pursuant to Chapter 59 of the Montgomery County code Project Plan must be met. Should these specified limits be exceeded in the construction to date that would



constitute a violation which (i) would require remedial action with reference to the offending existing structures and (ii) assurances from you and your subcontractors that such limits will be abided by in all current and future development in the Clarksburg Town Center.

#### Comments on Design Options

The general concept of a 60 ft. wide walkway, which could be made into an attractive, inviting area for pedestrians and for outdoor café seating, is appealing. However, as explained to us at the last meeting with you on October 26, 2004, the 60 ft. walkway located below the C-shape building, which is an extension of General Store Drive from the west, has an extreme grade. If we correctly recall, it was said that the drop was approximately 20 ft. over a linear length of about 150 to 200 feet of walkway. We are unanimous that we do not want such an extreme and artificial grade created. The topography of the area shows a drop of about 5 ft. over a similar length span.

We oppose the mix of uses presented in the C-shape building. Pursuant to Article 59-D.2.12 of the Montgomery County Code, the Project Plan specifies the locations and uses of buildings and structures. This area is designated as Retail/Office space only. Based on your proposal the C-shape building with its proposed mix of uses could be six stories from the parking lot view. Not only is this use not permitted, but this again goes back to the probability that this violates the height restrictions.

We do not believe a bank is necessary as it would only serve the population that belongs to that particular bank. A better use of the building would be for a stand-alone restaurant, other retail or relocated civic space/library. It is a generally accepted practice to establish bank services within a grocery store.

We are pleased with the orientation of buildings to streets on Clarksburg Square Road as this fosters the creation of a transit-and pedestrian-oriented neighborhood called for in the Master Plan.

The presentation of building pictures, two of which displayed curved corners, presents an architectural interest that is welcomed, as it appears to invite pedestrians from the town center into the retail area creating the "come and stay" atmosphere mentioned in our meetings with you.

The expanded street-oriented retail areas in Option 3 we view as a positive and the road to the retail from Clarksburg Square Road provides a more direct access for pedestrians, bicyclists and vehicles; these interconnected secondary streets are found in many older neighborhoods (also in keeping with the Master Plan).

The size and placement of the grocery store presents problems in both Options 1 and 3. Although Option 1 does not back to Stringtown Road and allows a more pedestrian friendly flow of truck traffic to and from the grocery store, it does however, break up the flow of strolling pedestrians along the area of the smaller shops. As discussed in the meeting with you, the retailer at the far end of the grocery store would not get much traffic and would be isolated from the other shops that face the open entrance area to the retail center from the town center. Likewise, Option 3 places the grocery store in a location that compromises the safety of pedestrians with no alternative exit for the delivery trucks except to pass in front of the grocery store.

We propose that the grocery's square footage be reduced in order to assure that the size and scale of the retail center are compatible with the Master Plans vision of the Town Center and to assure a compatible relationship to the Historic District.

With respect to the location of the grocery store, we are proposing that you consider locating this building so that it backs up to the retail stores that are street-oriented to Overlook Park Road or to the retail/office stores that are street-oriented to Clarksburg Square Road. A service road could run behind the row of retail shops and the grocer. This would serve to eliminate delivery traffic and would hide the back of the grocery store while placing street-oriented retail in a highly visible entrance to the retail center. Additional street-oriented retail could be added on either end of the grocer.

Another consideration might be to remove the free standing bank and move the grocery store closer to Overlook Park Drive allowing more space at the southwest side for trucks to turn around. This would eliminate the problem of trucks passing in front of the store in a pedestrian zone.

We propose locating the library above the grocery or other retail spaces, or where proposed bank is located as a trade for retail space in town square.

We also would like to remind you of the commitment we have to ensure the retail side is compatible and cohesive with the residential side. We propose that all buildings as well as all street corners have similar shape and/or continuity of design and height along Clarksburg Square Road as well as along Ebenezer Chapel Drive.

Also in reference to a recent letter sent to CTC residents by Property Management People, Inc., we believe that a meeting with residents in November

would be premature since there has not been a design presented that considers the recommendations and concerns of the community. To hold a meeting prematurely may possibly present the same confrontational atmosphere as the meeting of July 27, 2004 which would jeopardize the current constructive dialogue.

It is our hope that there can be more designs than option 1 (which resembles the Project Plan) and option 3 (which resembles your previous plan). We are committed to realizing a retail center that benefits the Clarksburg residents and surrounding communities, is consistent with the spirit of the Master Plan, the conditions and findings of the Project Plan and that is profitable to both the developer and retailers.

Sincerely,

The Clarksburg Town Center Advisory Committee (CTCAC)

**Witthans, Wynn**

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**From:** Kathie Hulley [kathie@FentonTitle.com]  
**Sent:** Thursday, October 14, 2004 11:29 AM  
**To:** Witthans, Wynn; Carter, John; Paul (and/or Mary) Majewski; Krisna\_Becker@hgsi.com  
**Subject:** Clarksburg Town Center

Please see attached letter from the Clarksburg Civic Association

Kathie Hulley  
Chair, Planning Committee

8/3/2005



Clarksburg Civic Association  
P.O. Box 325  
Clarksburg, Maryland 20871-0325

October 13, 2004

Maryland National Capital Park and Planning Commission  
Attn: Wynn Witthans

I understand that you have recently made a visit to Clarksburg to review the projects that are under way.

Please will you update us on your findings, particularly with respect to the heights and number of floors for the buildings which have already been constructed.

We want to be sure that builders are in full compliance with the Clarksburg Master Plan

My email address is: [kathie@fentontitle.com](mailto:kathie@fentontitle.com)

Sincerely,

Kathie Hulley  
Chair, Planning Committee

cc: John Carter

**Witthans, Wynn**

---

**From:** Synergiesinc@aol.com  
**Sent:** Wednesday, October 13, 2004 12:51 PM  
**To:** Ma, Michael  
**Cc:** Shileykim@aol.com; smithcar@mail.nih.gov; Witthans, Wynn  
**Subject:** Follow-up

Hello, Michael.

Kim and I wanted to thank you for taking the time to meet with us on Monday. We appreciated your time in discussing our concerns, and your referral to Douglas Johnsen relative to ongoing site plan enforcement issues.

As discussed, we are most concerned with the deviations to Project Plan Guidelines which may be inherent in some of the site plans previously approved. Understanding that due to process gaps, potential oversights, and/or developer/builder submission errors, there could have been some erroneous approvals, we appreciate your willingness to review existing site plans to determine compliance with the Master Plan and Project Plan Guidelines. We will also be further reviewing the issues we discussed relative to placement of significant buildings and other potential deviations to initially proposed site designations for various residential, commercial and amenity locations.

As you suggested, we did get a copy of the Site Plan Enforcement Document from Wynn. Unfortunately, the document in her files was missing one page (Page 4), but she has agreed to get a copy of this for us. We were unable to find a copy of the approved site plan containing the Bozzuto condominium we discussed, and Wynn was only able to advise us that she confirmed with the developer that it was 4 stories (that the supplemental lofts do not count as a story). We appreciate your offer to follow up on the specific height issue relative to the 4-story/45' height limitation clearly designated within the Project Plan Guidelines vs. the Buzzoto condominium height which we are certain exceeds the limitation.

As you directed, we will be in touch with Douglas Johnsen to discuss our concerns and request zoning enforcement assistance. However, we remain concerned that if the zoning enforcement group is enforcing based on approved site plans, site plans which may have deviated from the Project Plan Guidelines, that they may actually be enforcing plans that go against the Master Plan and Project Plan intent. On this issue, we appreciate your further investigation.

Again, thank you so much for your time and attention. We will wait to hear from you regarding the height issue and will keep in touch regarding our progress with the developer.

Kind regards,

Amy Presley  
301-916-7969 (office)  
301-526-7435 (mobile)

8/3/2005

## Witthans, Wynn

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**From:** Shiley, Kimberly (NIH/NCI) [shileyk@mail.nih.gov]  
**Sent:** Monday, September 27, 2004 5:59 PM  
**To:** Witthans, Wynn  
**Cc:** Carter, John; Maskal, Nellie; Edwards, Sue; 'synergiesinc@aol.com'; Smith, Carol Leigh (NIH/NCI)  
**Subject:** follow up

Wynn,

Thank you for taking the time to speak with me today concerning the issues I submitted via email. Confirming our conversation today, I understand that:

- You will not be following up further through your office relative to project building height verification; You would like us to contact the developer (Newland) directly regarding the height issues and for any documentation or validation of height requirements and compliance.
- Regarding the church vista and view as initially proposed in the Master & Project Plans and shown in the Phase 1 Site Plan (specifically relative to the "diagonal pedestrian mews" - from a lawn mews to a street mews - as supporting the initially planned church vista), and the placement of the community pool in that diagonal pedestrian mews, you maintain that those issues were already discussed and that the current development plans seem acceptable in your opinion. Although I mentioned that this seemed to me to be contrary to what was expressed by John Carter and all present at our meeting with M-NCPPC on August 21, you acknowledged that we have a difference of opinion on this issue.
- Regarding the changes to the approved project plan relative to the location of the multifamily units, single family attached and recreation areas, you maintain that the Project Plan merely showed a "series of sample blocks" and that the initial locations on the Project Plan are not binding. When reminded of the concern that condominiums were suggested to be placed above the retail/office space on Mainstreet, you stated "we can talk about that", as you believe the developer to be working within the guidelines of the Project Plan.

I do not believe our conversation overall, was in keeping with the information we discussed with John Carter, Nellie Maskal, Susan Edwards and you at our meeting of August 21. However, I will attempt to convey the information accurately to the CTCAC and determine from there how we can proceed on these issues.

As I mentioned, Newland is meeting with our CTCAC board, along with their new architect/designer, on October 12 to discuss our input relative to the Commercial/Retail section. Although I do not feel that it is appropriate for the CTCAC to acquire the information from Newland regarding their compliance with height issues, etc., I will present your suggestion and opinions on that to the CTCAC and get back to you if we require further information, validation or assistance from your office.

Thank you,  
Kim Shiley

## Witthans, Wynn

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**From:** Shiley, Kimberly (NIH/NCI) [shileyk@mail.nih.gov]  
**Sent:** Monday, September 27, 2004 9:16 AM  
**To:** Witthans, Wynn  
**Cc:** Carter, John; 'synergiesinc@aol.com'; Smith, Carol Leigh (NIH/NCI)  
**Subject:** CTC

greetings Wynn:

i'm needing to get in touch with you today and can be reached at home (301-515-0144). i realize that it must be a busy time for you all; however, the reason for my 3 attempts to reach you last week is that we do need some information/clarification. we are expected to update the CCA general meeting this evening (monday, 27th Sep) and would like to have accurate statements for them.

specifically, we need:

(1) clarification of the height issue; discrepancies with data sheets and project plan

(2) changes to the approved project plan relative to the location of the multifamily units, single family attached and townhomes (this impacts Section 1A and must be addressed now due to request for site plan amendment)

(3) changes relative to the church vista; specifically, the current absence of the "diagonal pedestrian mews". "the mews contains sitting areas and two large lawn panels and connecting walks, linking the church with the Town Square. the sitting area closest to the Town Square includes a trellis and a memorial to John Clark with the use of found headstones from the family grave site. the mews develops a visual and walkable axis between the church and the Town Square, highlighting these significant features of the existing and proposed development".

(4) location of pool in town square area and absence of a proposed tennis court. (why did the amount of recreation get reduced from the approved project plan to the Phase 1 approval?) the project plan gives specific location for this required recreation facilities. the proposed new location for the pool impacts the church vista.

i do appreciate your assistance wynn and look forward to hearing from you today.

Kim



**Witthans, Wynn**

---

**From:** Brown, Todd D. - TDB [tbrown@linowes-law.com]

**Sent:** Friday, March 25, 2005 11:51 AM

**To:** Witthans, Wynn

**Subject:** Clarksburg Project Plan Amendment

Wynn, per our discussion, we intend to file the following with the Project Plan Amendment application:

1. Completed application form and fee, including sign deposit for 4 signs.
2. Letter requesting the amendment.
3. Substitute pages for the Project Plan Book originally filed in 1994, as appropriate, with exhibits.
4. Substitute drawings for those filed in 1994, as appropriate.
5. Approved Project Plan Opinion.
6. List of Adjoining and Confronting Property Owners and Local Citizens Associations.

Please confirm by return email that you agree with this list, and please let me know how many copies of individual materials we should file. If you would like additional material filed with the application, please let me know. Thank you.

8/3/2005

## Witthans, Wynn

---

**From:** Wright, Gwen  
**Sent:** Wednesday, March 23, 2005 3:46 PM  
**To:** Witthans, Wynn; Ma, Michael  
**Cc:** Krasnow, Rose; El-Baba, Tariq  
**Subject:** RE: Clarksburg Historic House Inspection

Thanks for this information. I will call Gary Modjeska next week to set up an appointment - I am fully booked for the rest of this week.

**Gwen Wright**  
Historic Preservation Supervisor  
Montgomery County Department of Park and Planning  
8787 Georgia Avenue  
Silver Spring, MD 20910  
(301) 563-3400  
gwen.wright@mcppc-mc.org

-----Original Message-----

**From:** Witthans, Wynn  
**Sent:** Tuesday, March 22, 2005 2:46 PM  
**To:** Wright, Gwen; Ma, Michael  
**Cc:** Krasnow, Rose; El-Baba, Tariq  
**Subject:** Clarksburg Historic House Inspection

Gwen - the developers for Clarksburg, Newland Communities, told us that Eric Rudden's store and historic house in the right-of-way are now owned by Mr. Patel who we met at the earlier meeting. They would like to have you/staff evaluate the addition for the house as soon as possible so they can proceed with their plans for the retail center and the road connection. They expect to submit the project plan amendment and associated site plans within the next few weeks. The contact person to let you inside is Gary Modjeska of Area Properties @ 301-571-8203 or [gary@areapropertiesllc.com](mailto:gary@areapropertiesllc.com). They said he can get you in whenever you need to. I hope you are able to get in there soon so we know what the whole picture is. Thanks.

## Witthans, Wynn

---

**From:** Les Powell [lpowell@cpja.com]  
**Sent:** Wednesday, March 23, 2005 2:55 PM  
**To:** Witthans, Wynn  
**Cc:** Ray Burke; Ron Collier; 'Todd Brown'; 'Kim Ambrose'  
**Subject:** CTC lots 1-7 block J

Wynn,

I've checked on these lots. They are Miller and Smith lots that were sited by GLW. The lots that I believe are being challenged are lots 1, 3, and 6. These units project forward from the others and have a bay window. The front face of the furthest forward portion of the building is set at 10' from the street right of way. There are bay windows on these units which do extend into that 10'. If you look at The Montgomery County Zoning Ordinance Sec. 59-3.2 Bay windows, it states; "In any residential zone, any bay window, oriel, entrance, vestibule or balcony, 10 feet or less in width, may project not more than 3 feet into any minimum front or rear yard." The bay windows are less than 10' in width and they do not extend more than 3' into the building restriction line. I'm not sure if Mr. Bell was aware of this exemption.

**Witthans, Wynn**

---

**From:** JULNEAFA@cs.com  
**Sent:** Monday, March 14, 2005 9:00 PM  
**To:** Witthans, Wynn  
**Subject:** Clarksburg Craftstar condo issues

Wynn,

Thanks again for taking the time to update me about the situation related to handling the issues with the Craftstar condominiums at Clarksburg Town Center. As we discussed this afternoon, it really would help me with my planning to know about any resolution as soon as possible. If there is any news tomorrow (Tuesday) resulting from your internal meeting (if it happens), and you have a chance to send me a quick email (at this email address) or call me, that would be great. I'm not sure about my schedule tomorrow, but my office number probably is best to reach me or leave a message; it is 301-803-3976. I also may try to reach you tomorrow afternoon.

Thanks,  
Julie Neafach

**Witthans, Wynn**

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**From:** Mark Staniford [mstaniford@cpja.com]  
**Sent:** Wednesday, March 09, 2005 11:46 AM  
**To:** Witthans, Wynn  
**Cc:** Les Powell  
**Subject:** CTC - height

Here is a pdf dwg overall.

Mark Staniford  
Sr. Designer Planning Dept.  
Ph: 301.434-7000 Fax: 301.434-9394  
email: mstaniford@cpja.com

8/3/2005

## 4 STORY HEIGHT PLAN



**NEWLAND  
COMMUNITIES**

**CPI**  
Associates  
FEBRUARY 2000

Charles P. Johnson & Associates, Inc.  
PLANNING • ENGINEERING • CONSTRUCTION • DESIGN  
1000 N. 10TH ST., SUITE 100, DENVER, CO 80202  
303.733.1111 FAX 303.733.1112  
WWW.CPI-ASSOCIATES.COM

PHOTOGRAPH BY  
DUNCAN TERRAUM-AM

## Witthans, Wynn

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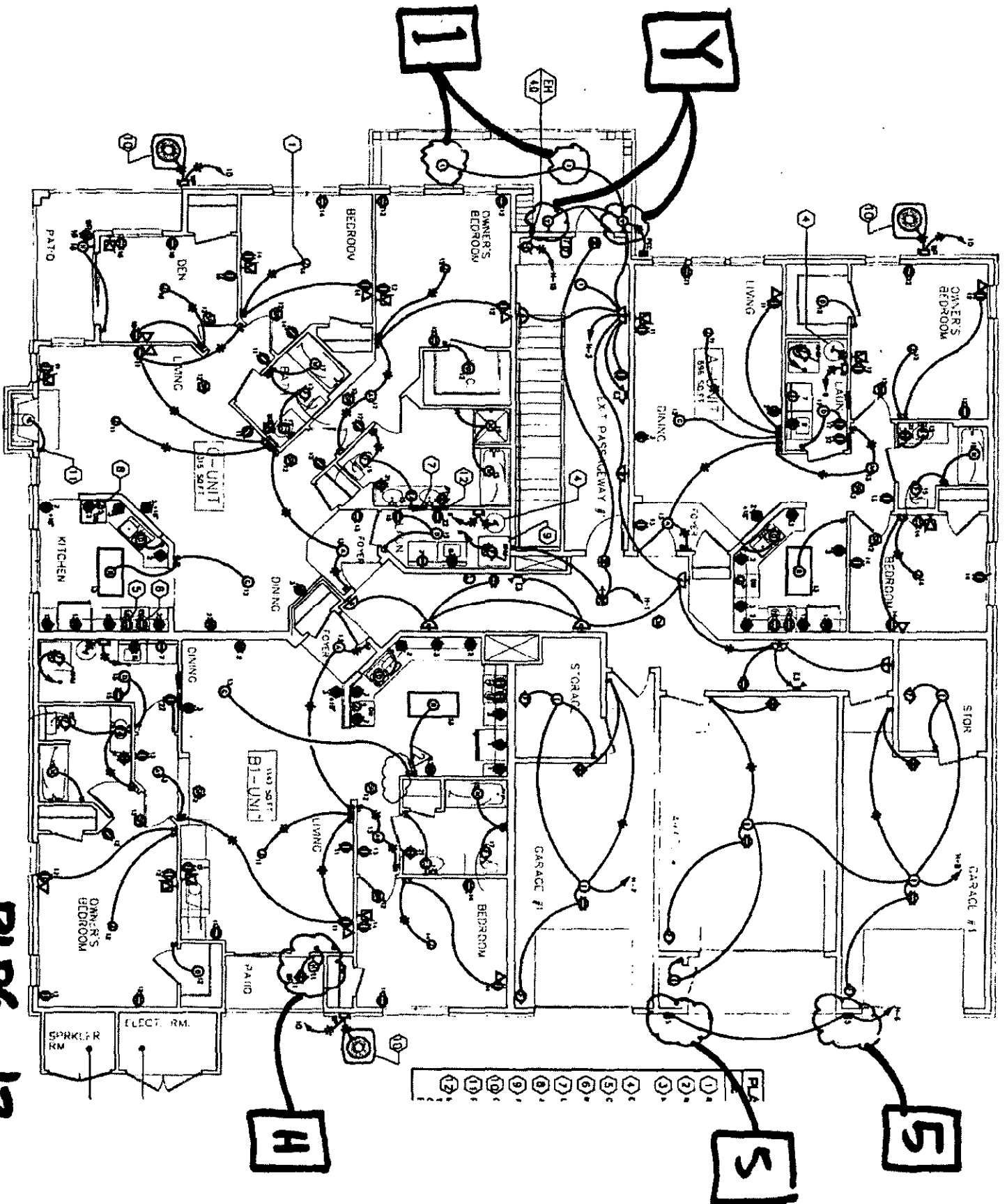
**From:** Jackie Mowrey [jmowrey@bozzuto.com]  
**Sent:** Tuesday, February 01, 2005 10:34 AM  
**To:** Witthans, Wynn  
**Subject:** FW: Clarksburg site lighting



clarkburg.pdf

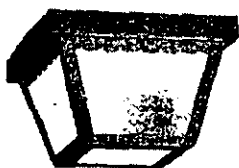
Hi Wynn. Here are the lighting fixture cut sheets for exterior lights of the Manor Homes. Please let me know if you need hard copies or any explanation. Thanks. .

Jackie  
<<clarkburg.pdf>>

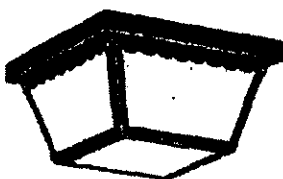


Bldg 12





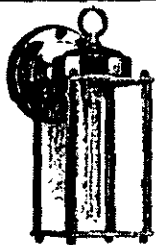
7567-01  
7567-02



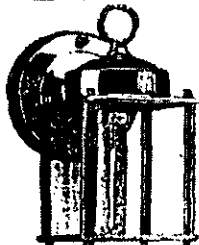
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7569-02



8566-32



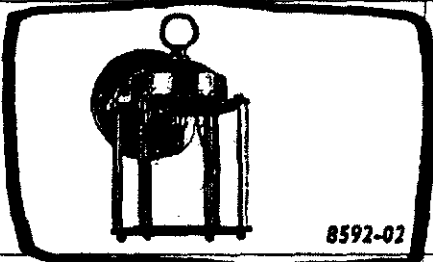
○ 89002-02



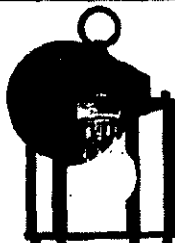
○ 89004-02



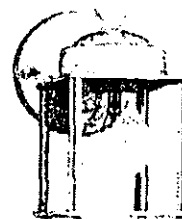
8592-01



8592-02



8592-12



8592-15



8592-17



8592-26



8592-71

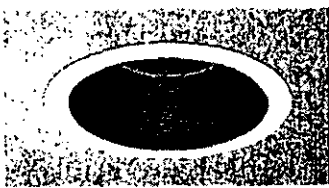
Item Number	Finish	Glass/Diffuser	Width	Height	Ext.	Ht. Ctr. of Outlet Box	Bulbs	Max. Wattage	Footnotes
7567-01	Antique Solid Brass	Textured Glass	7 1/2"	4 1/2"			One (M)	60w	CBR, DAMP
7567-02	Polished Solid Brass	Textured Glass	7 1/2"	4 1/2"			One (M)	60w	CBR, DAMP
7569-01	Antique Solid Brass	Textured Glass	9 1/4"	5"			Two (M)	60w	CBR, DAMP
7569-02	Polished Solid Brass	Textured Glass	9 1/4"	5"			Two (M)	60w	CBR, DAMP
8566-32	Black	Textured Glass	6 3/4"	7"	5 1/2"	2 3/8"	One (M)	100w	CBR
8592-01	Antique Solid Brass	Clear Glass	4 1/8"	8 1/4"	5 1/2"	2 3/4"	One (M)	100w	CBR
8592-02	Polished Solid Brass	Clear Glass	4 1/8"	8 1/4"	5 1/2"	2 3/4"	One (M)	100w	CBR
8592-12	Black Solid Brass	Clear Glass	4 1/8"	8 1/4"	5 1/2"	2 3/4"	One (M)	100w	CBR
8592-15	White Solid Brass	Clear Glass	4 1/8"	8 1/4"	5 1/2"	2 3/4"	One (M)	100w	CBR
8592-17	Verde Solid Brass	Clear Glass	4 1/8"	8 1/4"	5 1/2"	2 3/4"	One (M)	100w	CBR
8592-26	Sienna® Solid Brass	Clear Glass	4 1/8"	8 1/4"	5 1/2"	2 3/4"	One (M)	100w	CBR
8592-71	Antique Bronze Solid Brass	Clear Glass	4 1/8"	8 1/4"	5 1/2"	2 3/4"	One (M)	100w	CBR
○ 89002-02	Polished Solid Brass	Clear Acrylic	4"	10 1/4"	5 3/4"	2 3/4"	One	13w	H, Q
○ 89004-02	Polished Solid Brass	Clear Glass	4"	8"	5 3/4"	2 3/4"	One	7w	



# 6" Pacesetter Trims

6" Pacesetter Trims

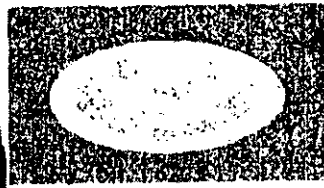
Type:



**RB30** (Shown) Full Black Baffle ♦  
**RB30W** Full Baffle ♦  
**ASRB30W** Air Seal™ White Baffle ♦  
 7 1/16" O.D. (179 mm) ▴ ▴

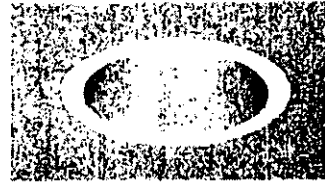
	R30	PAR30	PAR38
CR1			
CRR1	75W	75W	90W
QL1			
R150IC			90W*

\*100W PAR30W  
\*120W PAR30W



**RB40W** (Shown) Full White Baffle ♦  
**RB40** Full Black Baffle ♦  
 7 1/16" O.D. (179 mm) ▴ ▴

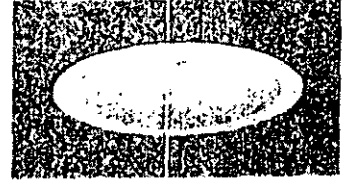
	R30	R40	PAR30	PAR38
R150IC	75W	100W	75W	120W
CR1	75W	90W	75W	90W



**RC30G** Full Gold Cone ♦  
**RC30C** Full Clear Cone ♦  
**RC30BK** Full Black Cone ♦  
**RC30W** Full White Cone ♦  
 7 1/16" O.D. (179 mm) ▴ ▴

	R30	PAR30	PAR38
CR1			
CRR1	75W	75W	90W
QL1			
R150IC	100W†		120W*

†75W RC30BK  
\*90W RC30BK



**RA100W** White Multiplier ♦  
**RA100G** Gold Multiplier ♦  
**RA100C** Clear Multiplier ♦  
 7 1/16" O.D. (179 mm) ▴ ▴

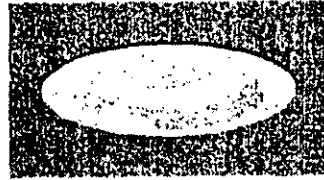
	A19	R30	R40	PAR30	PAR38
CR1					
CRR1	60W	75W	90W	75W	90W
QL1					
R150IC	100W	100W	150W*		120W

\*75W RA100W  
\*100W RA100W



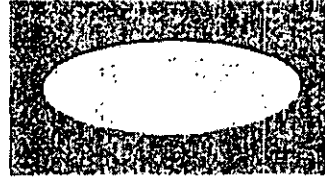
**RS30W** White Splay ♦  
 7 1/16" O.D. (179 mm) ▴ ▴

	PAR30	R30
CR1		
CRR1	75W	75W
QL1		
R150IC		100W



**SHR12IC** ♦  
 Regressed Shower Light  
 Wet Location Approved  
 6" O.D. (203 mm) ▴ ▴

	A19
CR1	
CRR1	25W
QL1	
R150IC	60W



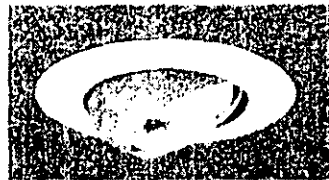
**SHR16IC** ♦  
 Regressed Drop Opal Shower  
 Light Wet Location Approved  
 6" O.D. (203 mm) ▴ ▴

	A19
CR1	
CRR1	25W
QL1	
R150IC	60W



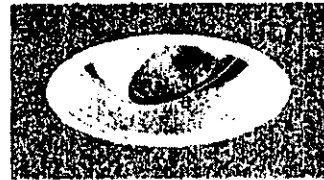
**RB45** (Shown) ♦  
 Scoop Wall Wash, Black Baffle  
**RB45W** Scoop Wall Wash, White  
 Baffle ♦  
 7 1/16" O.D. (179 mm) ▴

	A19
R150IC	60W



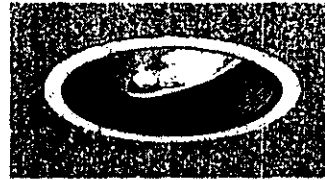
**R18** ♦  
 Eyeball  
 30° Tilt  
 6" O.D. (203 mm). P, B, PB ▴ ▴ ▴

	R30
CR1	
CRR1	75W
QL1	
R150IC	100W



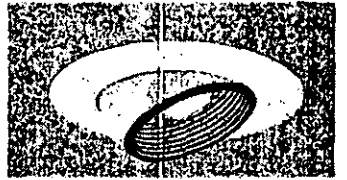
**RM38W** (Shown) ♦  
 White Stepped Baffle  
 Regressed White Eyeball  
**RM38** Black Stepped Baffle ♦  
 Regressed White Eyeball  
 30° Tilt  
 7 3/8" O.D. (187 mm) ▴ ▴ ▴

	PAR30
CR1	
CRR1	50W
QL1	
R150IC	75W



**RM48** (Shown) ♦  
 Black Stepped Baffle  
 Regressed White Eyeball  
**RM48W** White Stepped Baffle ♦  
 Regressed White Eyeball  
 30° Tilt  
 7 3/8" O.D. (187 mm) ▴ ▴ ▴

	R30
CR1	
CRR1	65W
QL1	
R150IC	100W



**R38** ♦  
 Baffled Eyeball  
 30° Tilt  
 6" O.D. (203 mm). P  
 ▴ ▴ ▴

	R30
R150IC	100W

Application Key: General Lighting ▴ Task Lighting ▴ Wall Wash Lighting ▴ Accent Lighting ▴ Splayed Ceiling Lighting ▴

♦ Canadian product offering specifications and wattages may vary from those shown.

Finish Key: P = White, B = Anodized Satin Brass, PB = Polished Brass

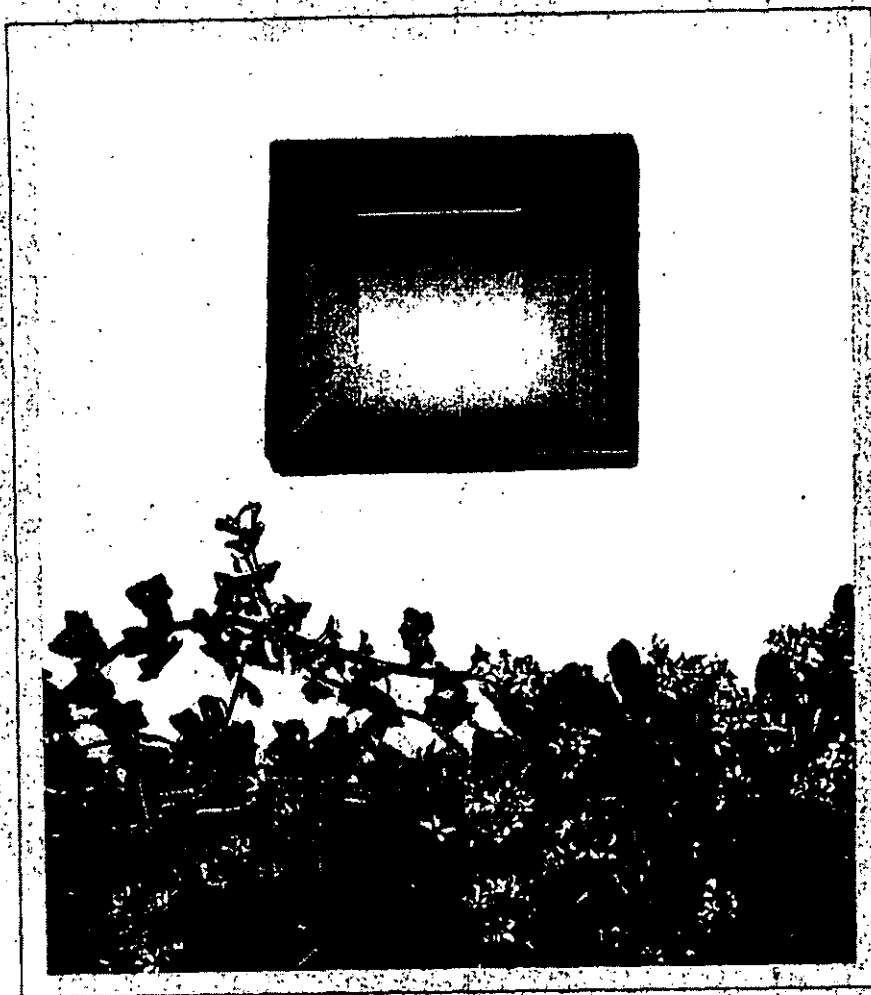
**CAPRI**  
 LIGHTING

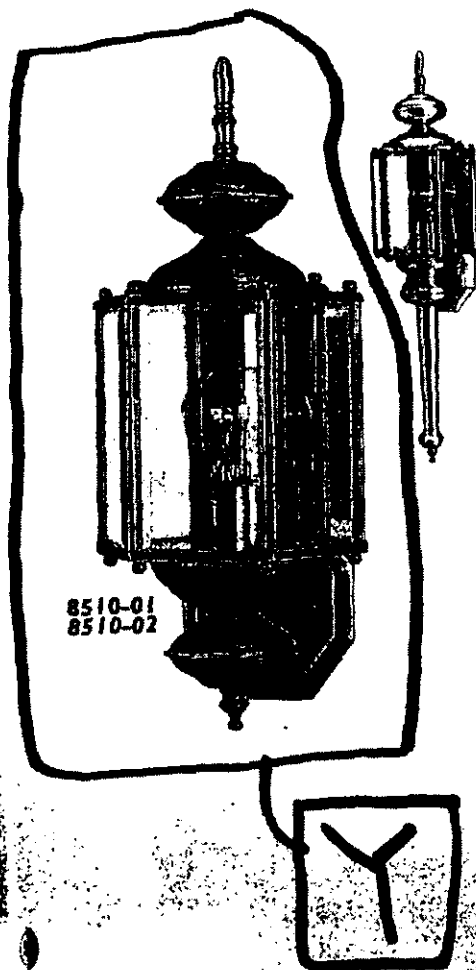
Capri Omega Division: 776 South Green Street, Tupelo, MS 38804 • Phone 662-842-7212 • FAX 662-841-5501  
 Canadian Division: 189 Bullock Drive, Markham, Ontario, Canada L3P 1W4 • Phone 905-294-9570 • FAX 800-268-0003  
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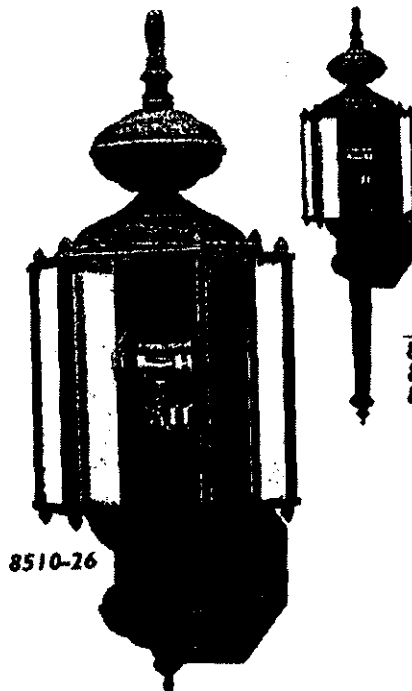
RA-5

5





8510-01  
8510-02



8510-26

#### Outdoor Wall Lantern

8510-01 Antique Finish Solid Brass  
8510-02 Polished Solid Brass  
8510-26 Sienna® Finish Solid Brass  
Clear Beveled Glass

Size: Width: 7" Height: 28 1/4"  
Height without Tail: 18 1/2" Extension: 7"  
Height from Center of Outlet Box: 15 1/4"

Wattage: One (M) 100w max.  
Install With or Without Tail.  
Clear Bulb Recommended.

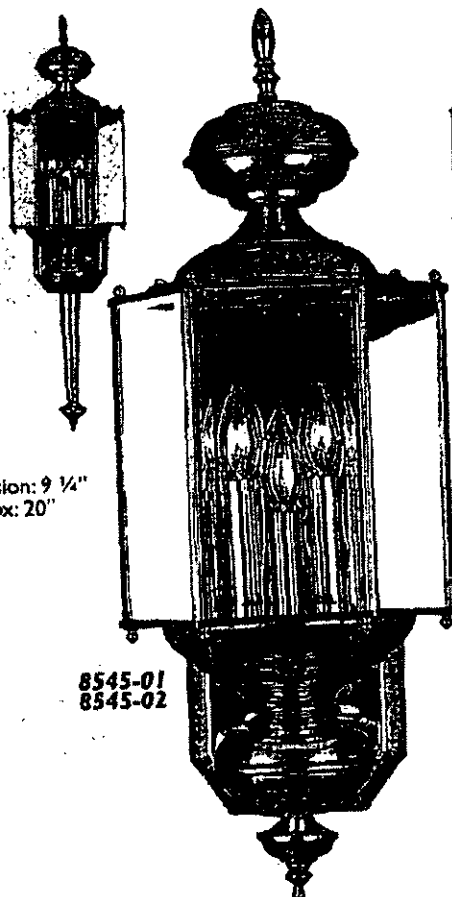
8545-01  
8545-02  
8545-26

#### Outdoor Wall Lantern

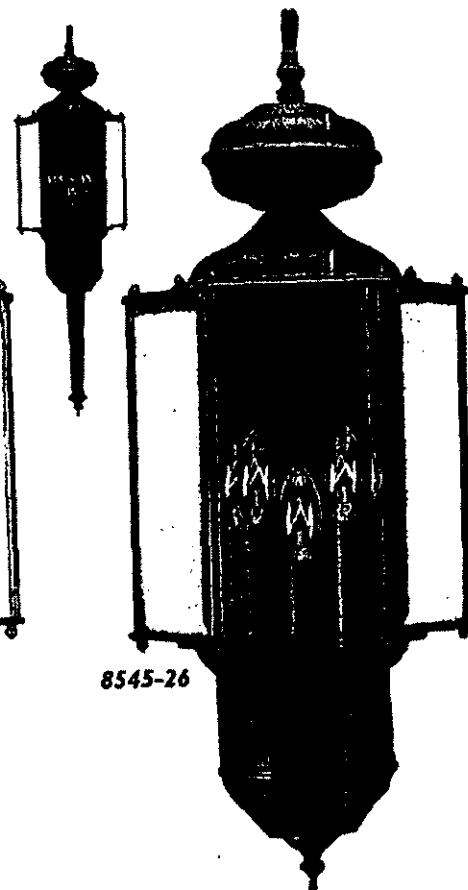
Antique Finish Solid Brass  
Polished Solid Brass  
Sienna® Finish Solid Brass  
Clear Beveled Glass

Size: Width: 9" Height: 34 1/2"  
Height without Tail: 23 3/4" Extension: 9 1/4"  
Height from Center of Outlet Box: 20"

Wattage: Three (C) 60w max.  
Install With or Without Tail.  
Clear Bulb Recommended.



8545-01  
8545-02



8545-26



**Witthans, Wynn**

**From:** Les Powell [lpowell@cpja.com]  
**Sent:** Thursday, February 24, 2005 8:35 AM  
**To:** Witthans, Wynn  
**Subject:** RE: Condominium Architectural Elevations

Does this mean you don't need the 2 over 2 architecture from me? Did Kim Ambrose get it to you?

-----Original Message-----

**From:** Witthans, Wynn [mailto:Wynn.Witthans@mncppc-mc.org]  
**Sent:** Wednesday, February 23, 2005 2:47 PM  
**To:** Shiley, Kimberly A; Krasnow, Rose; Ma, Michael; Synergiesinc@aol.com; smithcar@mail.nih.gov; mcp-chairman@mncppc-mc.org  
**Cc:** lpowell@cpja.com; cwagner@bozzuto.com  
**Subject:** RE: Condominium Architectural Elevations

Kim - we do have architecture for 2/2, condos and manor homes. You can make copies of the sheets you would like to here at our info desk. I only referred you to get arch. from other sources because of your original email where you stated: "If we need to contact another party, please advise." Our front desk is open from 8:30am -4:30pm Monday -Friday. The drawings are in my cubicle and marked with yellow post-it notes (for the front desk staff to identify).

-----Original Message-----

**From:** Shiley, Kimberly A [mailto:KShiley@psc.gov]  
**Sent:** Thursday, February 17, 2005 5:14 PM  
**To:** Witthans, Wynn; Krasnow, Rose; Ma, Michael; Synergiesinc@aol.com; 'smithcar@mail.nih.gov'; 'mcp-chairman@mncppc-mc.org'  
**Cc:** 'lpowell@cpja.com'; 'cwagner@bozzuto.com'  
**Subject:** Condominium Architectural Elevations

Hi Wynn,

Thank you for your phone call yesterday regarding my email inquiry (attached). After speaking with you, I immediately called you again, leaving a message on your phone and stated that I felt it is necessary for me (on behalf of the CTCAC) to obtain the requested elevations from within the departments of M-NCPPC. To re-cap the conversation we did have you stated that:

- architectural elevations are not required to be submitted by the builders to you for site plan approval.

- that you may have the Bozzutto building elevations, but would have to check on them and their whereabouts, and

- that you definitely did not have the Craftstar 2 over 2 architectural elevations.

Your suggestion to me was to obtain the elevations from the builder, Bozzutto myself. This leaves me confused and frustrated, as M-NCPPC is a tax-payer funded governmental entity that is supposed to serve the County's residents and communities. It does not seem appropriate for me to be directed to contact the individual private entities, the builders, for such information.

Can you suggest a more appropriate way for me to receive the information we need relative to the elevation drawings? If you do have these on file, requesting them from the builders as part of the site plan review process or on our behalf, I would be appreciative of your assistance in making such copies available to the CTCAC.

Kim Shiley  
on behalf of CTCAC

-----Original Message-----

**From:** Shiley, Kimberly A  
**Sent:** Thursday, February 17, 2005 5:09 PM  
**To:** Shiley, Kimberly A  
**Subject:** FW: Elevations

-----Original Message-----

**From:** Shiley, Kimberly A  
**Sent:** Tuesday, February 15, 2005 8:56 AM  
**To:** 'wynn.witthans@mncppc-mc.org'  
**Cc:** 'michael.ma@mncppc-mc.org'; 'rose.krasnow@mncppc-mc.org'; 'Synergiesinc@aol.com'; 'smithcar@mail.nih.gov'  
**Subject:** Elevations

Hi Wynn

Les Powell tells us that all elevations are submitted to Park and Planning during Site Plan submission.

The CTCAC is requesting copies of all elevations relative to the Bozutto Condominiums (Buildings 1, 2, 3, 4 (all Phase 1B-3), 5, and 6 (both Phase 2A)) and the Craftstar 2 over 2 Condominiums (Parcels B and N in Phase 2B and Parcels B, Blk M and Blk L, both Phase 2C).

If we need to contact another party, please advise. We are requesting to receive these elevations prior to the 24th of February.

Thank you for your assistance.

Kim Shiley  
 for CTCAC

p.s. also, if you are aware of the date for the threshold hearing, please advise. thank you again.

**Witthans, Wynn**

---

**From:** Smith, Carol Leigh (NIH/NCI) [smithc@efdb.nci.nih.gov]  
**Sent:** Wednesday, February 23, 2005 3:15 PM  
**To:** Witthans, Wynn  
**Subject:** RE: Condominium Architectural Elevations

fine if you feel like taking the day off and paying a fortune to P&P to make copies. Geez.

---

**From:** Witthans, Wynn [mailto:Wynn.Witthans@mncppc-mc.org]  
**Sent:** Wednesday, February 23, 2005 2:47 PM  
**To:** Shiley, Kimberly A (PSC); Krasnow, Rose; Ma, Michael; Synergiesinc@aol.com; Smith, Carol Leigh (NIH/NCI); mcp-chairman@mncppc-mc.org  
**Cc:** lpowell@cpja.com; cwagner@bozzuto.com  
**Subject:** RE: Condominium Architectural Elevations

Kim - we do have architecture for 2/2, condos and manor homes. You can make copies of the sheets you would like to here at our info desk. I only referred you to get arch. from other sources because of your original email where you stated: "If we need to contact another party, please advise." Our front desk is open from 8:30am - 4:30pm Monday -Friday. The drawings are in my cubicle and marked with yellow post-it notes (for the front desk staff to identify).

-----Original Message-----

**From:** Shiley, Kimberly A [mailto:KShiley@psc.gov]  
**Sent:** Thursday, February 17, 2005 5:14 PM  
**To:** Witthans, Wynn; Krasnow, Rose; Ma, Michael; Synergiesinc@aol.com; 'smithcar@mail.nih.gov'; 'mcp-chairman@mncppc-mc.org'  
**Cc:** 'lpowell@cpja.com'; 'cwagner@bozzuto.com'  
**Subject:** Condominium Architectural Elevations

Hi Wynn,

Thank you for your phone call yesterday regarding my email inquiry (attached). After speaking with you, I immediately called you again, leaving a message on your phone, and stated that I felt it is necessary for me (on behalf of the CTCAC) to obtain the requested elevations from within the departments of M-NCPPC. To re-cap the conversation we did have, you stated that:

- architectural elevations are not required to be submitted by the builders to you for site plan approval.
- that you may have the Bozzuto building elevations, but would have to check on them and their whereabouts, and
- that you definitely did not have the Craftstar 2 over 2 architectural elevations.

Your suggestion to me was to obtain the elevations from the builder, Bozzuto myself. This leaves me confused and frustrated, as M-NCPPC is a tax-payer funded governmental entity that is supposed to serve the County's residents and communities. It does not seem appropriate for me to be directed to contact the individual private entities, the builders, for such information.

Can you suggest a more appropriate way for me to receive the information we need relative to the elevation drawings? If you do have these on file, requesting them from the builders as part of the site plan

-----Original Message-----

**From:** Shiley, Kimberly A  
**Sent:** Thursday, February 17, 2005 5:09 PM  
**To:** Shiley, Kimberly A  
**Subject:** FW: Elevations

-----Original Message-----

**From:** Shiley, Kimberly A  
**Sent:** Tuesday, February 15, 2005 8:56 AM  
**To:** 'wynn.witthans@mncppc-mc.org'  
**Cc:** 'michael.ma@mncppc-mc.org'; 'rose.krasnow@mncppc-mc.org'; 'Synergiesinc@aol.com'; 'smithcar@mail.nih.gov'  
**Subject:** Elevations

Hi Wynn

Les Powell tells us that all elevations are submitted to Park and Planning during Site Plan submission. The CTCAC is requesting copies of all elevations relative to the Bozutto Condominiums (Buildings 1, 2, 3, 4 (all Phase 1B-3), 5, and 6 (both Phase 2A)) and the Craftstar 2 over 2 Condominiums (Parcels B and N in Phase 2B and Parcels B, Blk M and Blk L, both Phase 2C).

If we need to contact another party, please advise. We are requesting to receive these elevations prior to the 24th of February.

Thank you for your assistance.

Kim Shiley  
for CTCAC

p.s. also, if you are aware of the date for the threshold hearing, please advise. thank you again.



**Witthans, Wynn**

**From:** Kim Ambrose [kambrose@newlandcommunities.com]  
**Sent:** Tuesday, February 22, 2005 9:18 AM  
**To:** Witthans, Wynn; Ma, Michael; Krasnow, Rose  
**Subject:** FW: CTCAC meeting

Hi Wynn

Regency Center & Newland has a meeting this afternoon with the CTCAC to discuss Regency's marketing plan for the CTC property. I thought you'd like to see the letter that the CTCAC sent to Regency on Friday night.

Kim Ambrose, Vice President/Operations

Newland Communities - Mid Atlantic

8201 Greensboro Drive, Suite 817

McLean, VA 22102

703-917-4174 FAX: 703-917-4218

[kambrose@newlandcommunities.com](mailto:kambrose@newlandcommunities.com)

[www.newlandcommunities.com](http://www.newlandcommunities.com)

-----Original Message-----

**From:** Chess, Taylor [mailto:TChess@RegencyCenters.com]

**Sent:** Friday, February 18, 2005 5:21 PM

**To:** Kim Ambrose; gary@areapropertiesllc.com; Kris Warner

**Cc:** Pladsen, Tara

**Subject:** FW: CTCAC meeting

I thought you should see.

-----Original Message-----

**From:** Shiley, Kimberly A [mailto:KShiley@psc.gov]

**Sent:** Friday, February 18, 2005 5:13 PM

**To:** Chess, Taylor

**Cc:** Synergiesinc@aol.com; 'smithcar@mail.nih.gov'; Shileykim@aol.com

**Subject:** CTCAC meeting

Hi Mr. Chess,

Kim Ambrose gave us your email address in case we wanted to contact you directly before our meeting.

We appreciate your reading the attached letter prior to our meeting on the 22nd.

Thank you,

Kim Shiley, for CTCAC

18 February 2005

Hi Mr. Chess:

We look forward to our meeting with you on February 22, 2005. As we are sure you are aware, the functionality of the Retail Center for the Clarksburg Town Center is of extreme importance to the CTCAC and the residents we represent.

This concern is rooted in the fact that (1) the CTC will be the central focus for the entire Town of Clarksburg, literally the Town's Center (2) the residents purchased homes under the vision presented to them by the developers and builders: that of a New Urbanism community ("just like Kentlands, only better") and lastly (3) there is an expectation by Montgomery County Council, M-NCPPC and other associated Master Plan parties that Clarksburg Town Center will not end up like Germantown Town Center, an afterthought. They declared that the Town of Clarksburg would grow from the Town Center, a true Town Center, first and foremost.

There are 10 key policies to the Clarksburg Master Plan with Policy #6 stating: "this plan proposes a transit-oriented, multi-use Town Center which is compatible with the scale and character of the Clarksburg Historic District". One of the objectives under this policy is: "create a town center which will be a strong central focus for the entire study area" which "proposes residential, retail and office uses within the town center, but of equal importance is that the plan recommends civic and public uses also be concentrated here".

The designs presented by Trini Rodriguez and David Kitchens are extremely creative, however we know that they were restricted by the limitations of your contract with Newland Communities to design a functional and true town center. We recognize that the plans are much improved and are visually more attractive than the previous plans presented to the community last July. The CTCAC also recognizes that functionality is being restricted by the premise that this is merely a grocery anchored shopping center in the middle of a suburban community.

On the contrary, the Town Center was granted RMX2 zoning with the Optional Method of Development in order to ensure a high density, multi-use, pedestrian-friendly, neo-traditional urban Town Center which features residential, entertainment and civic uses as well as shopping. While the developer and builders are attempting to maximize the number of Board approved dwelling units, the retail center is left compromised in terms of entertainment and office uses. It is understood that there is only so much square footage of buildings (G.L.A.) that can be placed on the limited land (F.A.R.), however, the Giant is demanding 63k square feet (increased from 58,813 last fall) of space eliminating possible space for other uses.

Under the RMX2, O-M-O-D, there are many possibilities for entertainment uses: amusement centers, billiard parlors, bowling alleys, miniature golf, recreational or

entertainment establishments (i.e. movie theaters), roller and ice skating rinks. We are fortunate to have a cultural/civic component of a library and are excited about it's inclusion in the Town Center. Long time residents of Clarksburg as well as newcomers have anticipated the addition of a Senior Center. We will investigate the feasibility of incorporating this element within the Library.

We have spoken with the movie theater operator in the Kentlands. He operates 10 screens in 30k square feet and requires 400 parking spaces. Again, we understand our limitations of total F.A.R.; however, with some modifications to the proposed plan, we believe an area of appropriate proportions to our retail center could accommodate movie theaters. Additional parking levels could be included in the proposed garage to support this entertainment component of the Town Center. The Kentlands' operator has stated that his company may be interest in our Town Center as a future site for his type of establishment. He has offered to meet with the CTCAC and our support of this type of Town Center component is apparent. We need Regency Centers' support. We would like to facilitate a meeting with Regency Centers, CTCAC and the theater operator for further investigation of this possibility.

Again, we believe that in order to achieve a diverse and lively Town Center as called for by the Master Plan, all components of a Town Center must be present. The M-NCPPC Planning Board and the County Council agree. In fact a "Mixed-Use Town Center Zone" is being considered which would recognize the demand for small town-style Main Streets to replace strip shopping centers. The County realizes that compact and pedestrian-friendly Town Centers with residential, entertainment, civic and shopping uses are desirable by consumers and creates an opportunity for developers to allow for more flexibility in design and land use.

It is our concern that the proposed design is limiting the functionality of the true Town Center concept. Clarksburg Town Center, the heart and soul of Clarksburg, should be built today to serve the entire community now and into the future.

Thank you for your time.

Kim Shiley, Carol Smith, and Amy Presley, for CTCAC

## Witthans, Wynn

**From:** Paul (and/or Mary) Majewski [pmajewski@att.net]  
**Sent:** Tuesday, February 22, 2005 8:37 AM  
**To:** Witthans, Wynn; Maskal, Nellie  
**Subject:** Fw: Fire Safety Issues re Narrow or Closed Clarksburg Roads

Hi -

Kathie Hulley suggested I send you a copy of this too. Notice below that we cc'd your PB chair in the original sending.

- Paul

----- Original Message -----

**From:** Paul (and/or Mary) Majewski

**To:** MC Council

**Cc:** Chief Michael Love ; Michael Knapp ; Nancy Floreen ; Michael Subin ; George Leventhal ; Phil Andrews ; Tom Perez ; Howard Denis ; Marilyn Praisner ; Steve Silverman ; ocmemail@montgomerycou ; Duncan, Douglas ; mcp-chairman@mncppc-mc.org ; Jean Cryor ; Leroy Anderson ; Joseph Cheung ; Shahriar Amiri ; Matthews, Catherine ; Nancy Hislop ; Chief Mark Davis ; Pat Bradley ; Robert Hubbard ; Kathie Hulley

**Sent:** Tuesday, February 22, 2005 7:38 AM

**Subject:** Fire Safety Issues re Narrow or Closed Clarksburg Roads

**cCa**

Clarksburg Civic Association

P.O. Box 325

Clarksburg, Maryland 20871-0325

February 22, 2005

Honorable Council President Steven Silverman:

Please find attached a MS-Word file, *FireSafetyReClarksburgRoads\_LtrToCouncilEtc.doc*, whose body follows. We've mailed a copy USPS to you and are emailing you and this email's cc list.

The Council and county agencies need to act on several fronts to assure that we remedy a couple of **major obstructions to emergency response in Clarksburg that could result in fatalities**.

1. Fire Marshall Chief Michael Love, has expressed his concern that, in a test, a **fire engine ladder truck could not negotiate the roads in the new Clarksburg Town Center neighborhood**. Chief Mark Davis has said that painting fire lanes and bringing appropriate apparatus, such as longer fire hoses, would be necessary. The Hyattstown Volunteer Fire Department has been alerting us that the new roads are too narrow!

**ACTION ITEMS:** The council needs to provide oversight in the following:

- Immediately remedy the current situation.
  - Paint the fire lanes and widen roads where possible.
  - Strictly, enforce no parking in fire lanes.
  - Remedy any parking shortages created by having fire lanes in the Town Center.
  - **Additionally, make haste in installing a temporary fire station in Clarksburg as Chiefs Love and Davis suggest.**
- Quickly put plans into effect to assure that inaccessible areas are not allowed again. For example, F&RS could be empowered to analyze and approve or disapprove every development plan that comes to the planning board, based on ability for their best equipment to reach every site in the development. Having a long fire hose is not an adequate substitute for getting a fire engine ladder truck to the site, nor is driving off road an adequate substitute.

8/3/2005

**2. Road closures, especially simultaneous ones, are lengthening response time to our new dense neighborhoods to an extreme - beyond 12-minute response.**

Four roads namely, Clarksburg, Stringtown, Piedmont and Skylark serve the area of Clarksburg currently undergoing the most intensive growth. These roads provide access to either Maryland Route 27 or 355 for the residents of Clarksburg and conversely the means by which county services, including fire and police, use to get to those same people. Some spots in this area are already at about the 12-minute response time for the Germantown, Damascus, and Hyattstown fire departments.

In most cases, the closing of any road creates a surmountable obstacle that fire departments are accustomed to overcoming. **All** of these roads are slated to be closed in 2005. It seems that they might have all been closed simultaneously if a Clarksburg resident hadn't brought that to the county's attention. As it is, the part of Piedmont Road, that connects Stringtown to Clarksburg Road, remains closed for one year beyond its scheduled closure. Skylark is about to close, for six months we hear. Stringtown was scheduled for closure in summer of 2005. Clarksburg Road would be partially closed by this summer, also.

ACTION ITEMS: The council needs to provide oversight in the following:

- Immediately allow F&RS, with citizen interaction, to control the timing of these particular road closings.
- Allow F&RS input, and weigh their input heavily, in the planning process from master plan conception, through setting staging triggers, through pre-preliminary development plans, through site plan, and through construction.
- **Build roads adequate to handle construction of any further developments, even if this means a moratorium on housing construction until the roads are built. Similarly the staging of the construction must become smarter, so that only houses near adequate roads are built first. Use and occupancy permits should not be issued until the infrastructure is safe.**
- Coordinate the activities of the various agencies.

In addition to the specific actions above, here are additional related observations:

- We commend the actions and responsiveness of the F&RS and Hyattstown Volunteer Fire Department. They have been most responsive to the concerns of our residents.
- In dealing with other governmental agencies, residents have had an extremely difficult task in determining which agency was responsible for the timing of the road closings. We understand there has been a committee formed, the Clarksburg Development Work Group, with primary representatives from each of the supporting agencies representing this area, to deal with the problems related to growth. We have also heard of a new position to handle coordination of construction activities in Clarksburg. We approve of these measures, but neither we, nor the Council, should think this alone will solve everything.
- Montgomery County Council should raise its oversight of coordination of agencies, and to listen closely to feedback from citizens, the Clarksburg Civic Association, and the upcounty liaisons.

Sincerely,

Paul E. Majewski, President, Clarksburg Civic Association

Kathie Hulley, CCA Planning Committee Chair